

*United States Court of Appeals
for the Second Circuit*



APPENDIX

B
PLS

NO. 74-2557

United States Court of Appeals FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner.

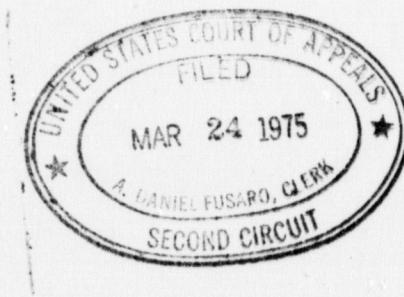
v.

LIZDALE KNITTING MILLS, INC.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel.
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

INDEX

	App. <u>Page</u>	
CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES	1	
DECISION —		
Dated January 16, 1974	3	
DECISION AND ORDER —		
Dated June 25, 1974	19	
GENERAL COUNSEL'S EXHIBIT NO. 1(c)	40	
GENERAL COUNSEL'S EXHIBIT NO. 1(e)	48	
RESPONDENT'S EXHIBIT NO. 1	50	
ADMINISTRATIVE LAW JUDGE'S EXHIBIT NO. 1	51	
ADMINISTRATIVE LAW JUDGE'S EXHIBIT NO. 2	53	
EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS	55	
 <u>Witnesses:</u>	 Tr. <u>Page</u>	 App. <u>Page</u>
ALEX QUINONES		
Direct	6	55
Cross	18	63
Redirect	48	78
ABELARDO CEBALLOS		
Direct	53	80
FRANK MONTE		
Direct	59	81
Cross	67	86
Redirect	73	90
Recross	74	91
MARTA CEBALLOS		
Direct	87	95
Cross	101	99
Redirect	108	104

Witnesses (continued):	<u>Tr.</u> <u>Page</u>	<u>App.</u> <u>Page</u>
HYMAN GELBORD		
Direct	119	105
Cross	179	134
Redirect	214	138
Recross	217	139
ANNA IRITZ		
Direct	218	140
AMPARO GOMEZ		
Direct	236	144
MARIA LOPEZ		
Direct	251	145
ROSA SALAZAR		
Direct	256	146
Cross	258	147
MARINA CASTILLO		
Direct	262	147
ELLA HERSKOVITZ		
Direct	265	148
Cross	279	155
IMRE HAAS		
Direct	295	157
Cross	307	160
EUCARIS CEBALLOS		
Redirect	324	162

APPENDIX

LIZSALE KNITTING MILLS, INC. *
and * Case No. 29-CA-3426
KNITGOODS WORKERS UNION LOCAL *
155, INTERNATIONAL LADIES GARMENT *
WORKERS UNION, AFL-CIO *
Vincent Coffey, Esq., for the General *
Counsel. *
Leonard S. Kimmell, Esq., *
(Kimmell & Kimmell), of *
Mineola, N. Y., for the *
Respondent. *
Willard Aldrich, Organizer and *
Alex Quinones, Organizer, for *
the Charging Party. *

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Lizzdale Knitting Mills, Inc.

Case No. 39-CA-3426

- 6. 6.73 Charge filed in Case No. 29-CA-3426
- 8. 2.73 Complaint in 29-CA-3426 dated
- 8.13.73 Respondent's Answer dated
- 8.24.73 Respondent's request to postpone Hearing dated
- 8.31.73 Order Rescheduling Hearing dated
- 9.13.73 Respondent's request to postpone hearing dated
- 9.18.73 Order rescheduling hearing dated
- 9.18.73 Respondent's request to postpone hearing dated
- 9.19.73 Order rescheduling hearing dated
- 10. 2.73 Order rescheduling hearing dated

10. 4.73 Respondent's amended answer dated
10.16.73 Respondent's Motion to produce dated
10.23.73 Hearing opened
10.24.73 Hearing closed
1.16.74 Administrative Law Judge's Decision issued
2.25.74 Respondents Exception to the Decision of the Adminis-
trative Law Judge, received
6.25.74 Decision and Order issued by the National Labor Rela-
tions Board dated

[Dated 1/16/74]

[JD-(SF)-5-74
Brooklyn, N.Y.]

* * * *

DECISION

Statement of the Case

DAVID E. DAVIS, Administrative Law Judge: This case was tried before me at Brooklyn, New York, on October 23 and 24, 1973,^{1/} upon the basis of a charge filed ^{2/} by Knitgoods Workers Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO, herein called the Union or the Charging Party against Lizdale Knitting Mills, Inc., herein called Respondent or Company, and a complaint, issued on August 2, on behalf of the General Counsel by the Regional Director for the 29th Region of the National Labor Relations Board, herein called the Board. The complaint alleged in substance that on May 30, June 4, and other times thereafter, Respondent, through certain supervisors, threatened its employees with discharge and other reprisals if they joined or remained members of the Union or assisted it; that on or about May 31, Respondent laid off employees Abelardo Ceballos, Luz Maria Vallada, Marta Guerrero, and Eucaris Ceballos; that since the layoffs, Respondent has failed and refused to recall said employees to their former or substantially equivalent positions; that Respondent caused the layoffs and failure to recall because the above-named employees joined or assisted the Union and engaged in other concerted activity for the purpose of collective bargaining and mutual aid or protection; that thereby Respondent engaged

1/ All dates hereafter refer to 1973 unless otherwise specified.

2/ The charge was filed on June 6, and was served on Respondent on June 7.

in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

Respondent in its answer, while admitting certain allegations of the complaint, denied that it had engaged in any unfair labor practices.

Upon careful consideration of the oral argument of counsel for Respondent, the briefs submitted by the General Counsel and counsel for Respondent, and the entire record in the case, I make the following:

Findings and Conclusions

I. The Business of the Company

Respondent is a New York corporation maintaining its principal office and place of business at 8000 Cooper Avenue, Borough of Queens, City and State of New York, where it is engaged in performing knitting contracting services and other related services in the garment industry. During the past year, Respondent manufactured, sold and distributed products valued in excess of \$500, 000 of which in excess of \$50, 000 was supplied to enterprises located in New York State which produce knitted goods valued in excess of \$50, 000 which are shipped directly to points outside the State of New York. The complaint alleged, the answer admitted, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Labor Organization Involved

The complaint alleged, the answer admitted, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The Issues

1. Did the Respondent's top officials, on May 29, 1973, observe the four dischargees receive union authorization cards from the union organizers?
2. Did Ella Herskovitz, an admitted supervisor, tell employees on or about May 30, 1973 that those employees who signed union cards would be discharged?
3. Were Abelardo Ceballos, Luz Maria Villada, Marta Guerrero and Eucaris Ceballos discharged on or about May 31, 1973, because of their suspected union activity?
4. Did Respondent on May 30 and June 4, 1973, by its officials threaten employees with discharge or other reprisals if they became or remained members of the Union or gave assistance or support to the Union?

B. Preliminary Findings

The evidence and my personal observation shows that Respondent's plant is located on the second floor of a corner building; that there are seven or eight steps that lead into the building. It is undisputed that on May 29, 1973, Willard Aldrich and Alex Quinones, union organizers, arrived at Respondent's plant about 4:30 p. m. and distributed union authorization cards to Respondent's employees as they were leaving the plant. Abelardo Ceballos, hereafter referred to as Abelardo, testified that a woman ^{3/}came down the stairs while he was talking with the union organizers, took a union card from one of the organizers and after she was told by Quinones that he was trying

^{3/} He described her as an American lady.

to organize the employees, returned to the plant; that shortly thereafter he saw Hyman Gelbord, 4/ Imre Haas, 5/ and Ella Herskovitz, 6/ look out from a window on the second floor of the building; that they observed Villada, Guerrero, and Eucaris Ceballos, and himself, while they were talking with the union organizers and while they held union authorization cards in their hands. According to Abelardo's testimony, he was one or two feet away from the outside steps leading to the entrance of the building so that he had a clear view of those in the window and could recognize them. 7/ Guerrero supported Abelardo's testimony in this regard and it was stipulated that if Eucaris and Villada were to testify that their testimony would be similar to that of Abelardo's and Guerrero's.

Respondent's Exhibit No. 1, received in evidence, is a crude, unscaled drawing of the building and stairs leading to the entrance. Pursuant to the request of the undersigned, a view of the premises was taken in the company of both counsel. Each of us inspected the premises and entered the plant and office. As counsel, contrary to my expectations, could not agree on a stipulation, each of them made a report to me as to their personal observations. 8/

Counsel for Respondent concedes that the "ground in front of the outside stairway at Respondent's plant is visible to an observer

4/ Respondent's president.

5/ Respondent's secretary-treasurer.

6/ Respondent's forelady.

7/ The undersigned stood in this same position and was able to clearly recognize persons looking out of window No. 6.

8/ Counsel for Respondent's report is received into evidence as Administrative Law Judge's (ALJ's) Exhibit No. 1 and General Counsel's report is received and designated as Administrative Law Judge's (ALJ's) Exhibit No. 2.

in window No. 6 to a point two feet from the front of the stairway." ^{9/} Accordingly, it is plain that Abelardo and the others could be seen on May 29 as Abelardo testified. It is likewise obvious that Abelardo and the others could plainly see Respondent's officials from the point Abelardo placed himself in his testimonial account. My own observation of the premises confirms the fact that if one stands on a chair looking out of window No. 6, one has a clear view of persons standing on the bottom two steps of the outside stairway. On the other hand, observation from window No. 5 is cumbersome and a good deal restricted because of a roof-like protrusion over the entrance to the plant. I find based upon the conclusions I have drawn from both counsel's report of the view of the premises as well as my own observations of the premises and the demeanor of the witnesses, that Quinones, Abelardo, and Guerrero are to be credited in their testimony that the Ceballos group was observed by Gelbord, Haas, and Herskovitz on May 29 about 4:30 p. m., when Aldrich and Quinones were talking to the Ceballos group at the bottom of the outside staircase.

C. Events of May 30

Abelardo testified that while he and the other members of his group ^{10/} were eating their lunch on Respondent's premises, Herskovitz came over to where they were eating and said, "If somebody signed union cards, no more work, fired."

According to Abelardo, he immediately translated what Herskovitz had said to the other members of the group seated near him.

^{9/} First enumerated statement in ALJ's Exhibit No. 1.

^{10/} Reference to the Ceballos group or family herein, refers to those alleged to have been discriminatorily discharged.

Guerrero testified to the incident stating that while she didn't understand what Herskovitz said, Abelardo translated it saying that if they signed cards the factory would be closed and that everyone who signed would be fired one by one. 11/

Herskovitz in her testimonial account did not make a specific denial of this incident. Moreover, as detailed below, I consider Herskovitz an unreliable witness who had little or no regard for the truth. I do not credit the evidence adduced through Mona Lopez, Rosa Salazar, and Morina Castillo to the extent that their testimonial account contradicts the testimony of Abelardo with regard to the threat of discharge made by Herskovitz on May 30. Accordingly, I find that Respondent, on May 30, through and by Herskovitz engaged in conduct violative of Section 8(a)(1) of the Act.

D. The Discharge of the Ceballos Group

There is no dispute that about 4:30 p. m. on May 31, Abelardo and the other members of the Ceballos group were informed that they were being laid off for lack of work. According to the credited testimony of Abelardo he protested to Gelbord that Gelbord had hired a man on May 30 for the same job he was doing and had hired other personnel during the week. Abelardo then added that he knew why they were being discharged. When Gelbord asked what he thought the reason was, Abelardo replied that he knew it was because they had signed union cards. 12/ After Gelbord said that he didn't understand, Abelardo

11/ As noted above, it was stipulated that if Eucaris and Villada were to testify, their account would be substantially the same as Abelardo's and Guerrero's with reference to this incident in that Abelardo told them in Spanish that they would be fired if they signed cards.

12/ Abelardo said that he made this statement to Abelardo, "in my English".

repeated his statement. Again Gelbord said that he didn't understand. Abelardo then taking a piece of paper and pencil wrote the word "Union" in English. Gelbord said that that was not the reason and repeated that there was "no more work." Gelbord at this point ended the conversation by saying "Good-bye". Abelardo then asked him when they should come back for their vacation checks and Gelbord replied that there would be no vacation checks but to come back the following Monday for their paychecks.

Later that day, Abelardo informed Quinones of the situation and arranged to meet with Quinones on Monday morning, June 4. Gelbord conceded that he told Abelardo and his group that they had been laid off because orders were being cancelled and work was getting slow. He then testified that this was not factually true and that the actual reason for the discharge of the group was his suspicion that the group had been stealing sweaters from Respondent. As will be discussed, infra, I do not credit Respondent's stated reasons for the discharge either to the effect that work was slow or that the discharges resulted from his suspicion that the group was stealing some of Respondent's merchandise.

E. The Confrontation of June 4

On June 4, Quinones, Aldrich, and chief organizer, Norman Lewis, accompanied the Ceballos group to the plant in an attempt to secure the reinstatement of Ceballos and his relatives. Upon entering the plant, Lewis handed his business card to Gelbord and stated that as Gelbord had discharged them because of union activity he was requesting their reinstatement. Gelbord, according to the credited testimony of Quinones, refused to reinstate them saying that he would never "accept the Union," that he would rather close the shop down, that he then refused to talk further with Lewis and tore up Lewis' card.

Gelbord and Haas testified that employees in the plant were quite excited when they saw the union representatives accompany the Ceballos group. As a result there was much shouting and a commotion created. Both Haas and Gelbord testified that Herskovitz participated in this "commotion" saying "I . . . was not in the shop at the time. Herskovitz, on the other hand, admitted that she arrived in time to see "fifteen people from the plant, fighting each other . . . then I realized they're up, and I tried to tell them, why don't you get out, I did tell them why don't you go out, you have no business to be here." Questioned further she added that she made the foregoing statements to the union people.

Although Herskovitz testified she arrived near the end of this incident, I find that she spear-headed this commotion. I find that this incident is sufficiently identified in the allegations of paragraph 8 of the complaint and find that it was fully litigated. Accordingly, I find that Supervisor Herskovitz, by telling the union representatives to get out in the presence of other employees when the union representatives were present on legitimate business, engaged in coercive conduct. Moreover, I regard the entire incident including Gelbord's conduct as demonstrating Respondent's animus toward the Union and its employees' union activity.

F. The Defense

The defense rests on the theory that the Ceballos group was suspected of thievery and that they were discharged for that reason. I regard this defense as having been contrived immediately after the discharges and that the testimony in support of this defense is a complete fabrication.

In my view, it is quite apparent that Respondent's witnesses were participants in a calculated plan to deceive the Administrative

Law Judge assigned to adjudicate this case. The witnesses enmeshed themselves in a morass of untruths that cannot withstand scrutiny. At the very outset, Gelbord insisted that the persons standing within 2 feet of the outside stairway of the plant could not be seen from window No. 6 even if one stood on a chair. 13/ My personal observation and the admissions of counsel for the parties disprove Gelbord's testimony in this regard. Gelbord's testimony concerning his sponsorship of the "trapless" trap that allegedly resulted in several dozen sweaters being stolen from the plant, is an obvious contrivance which I will not belabor. Suffice it is to say that even if Gelbord's story were true, no guilt could be placed on Abelardo or any members of his group. Moreover, it taxes one's credulity to believe that after carefully planning the trap, Gelbord would permit himself to be distracted by a telephone call for the length of time it would take to complete the theft. Haas alerted to the alleged trap, also neglected to place himself in a position to observe. These coincidences hardly lends credence to the entire story. Finally, if in fact, there was merchandise being removed surreptitiously from the plant over a period of time, the methods selected by Respondent to discover the guilty person or persons reveals an air of casualness and lack of concern that raises serious doubts as to whether any merchandise was in fact ever missing. 14/

13/ Indeed Gelbord said only the opposite side of the street could be seen.

14/ I have due regard for the fact that Respondent produced records at the hearing which according to Gelbord's and Haas' testimony showed substantial shortages. However, there may be other explanations for the missing merchandise. At any rate, the thievery explanation proffered by Respondent is rejected.

The incident of the brown bag containing sweaters strikes me as one entirely without any foundation from its very inception as I credit the testimony of Vallada and Eucaris Ceballos that they did not use the restroom at night inasmuch as they left their coats near their work benches. I believe the entire incident as developed by Respondent's witnesses is unworthy of the slightest credibility.

I am lead to this conclusion not only by my analysis of the record and the inferences to be drawn therefrom but also by my observation of the witnesses. I regard the Ceballos family as simple people who are interested only in seeking redress of their grievances by reciting the factual account of the events to the best of their memories. A completely opposite impression was created by Respondent's witnesses. Accordingly, I am compelled to give little or no weight to the main thrust of the testimony proffered by Respondent's witnesses.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in Section III, above, occurring in connection with Respondent's operations described in Section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the foregoing findings of fact and conclusions, I hereby make the following:

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, as specified above, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging and discriminating with regard to the hire and tenure of employment of Abelardo Ceballos, Luz Maria Villada, Marta Guerrero, and Eucaris Ceballos, Respondent discouraged membership in the Knitgoods Workers Union Local 155 International Ladies Garment Workers Union, AFL-CIO and committed unfair labor practices within the meaning of Section 8(a)(3) of the Act.

V. The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it be required to take certain affirmative action designed to effectuate the policies of the Act.

As Respondent unlawfully discriminated against Abelardo Ceballos, Luz Maria Villada, Marta Guerrero, and Eucaris Ceballos by discharging them on May 31, 1973, it will be recommended that Respondent offer the above-named employees immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges, or if their jobs no longer exist, to a substantially equivalent job, and to make them whole for any loss of pay that they may have suffered by reason of Respondent's discrimination against them, by paying to each of them a sum of money equal to that which each of them normally would have earned as wages from May 31, 1972, to the date of Respondent's offer of reinstatement, less their respective net earnings during that period. The amount of

backpay due them shall be computed according to Board policy set forth in F. W. Woolworth Company, 90 NLRB 289, with interest on backpay computed in the manner set forth in Isis Plumbing & Heating Company, 138 NLRB 716. Payroll and other records in possession of Respondent are to be made available to the Board or its agents, to assist in such computations.

As the unfair labor practices found herein strike at the very heart of the Act, I shall recommend a broad cease and desist order.

Upon the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend that there be issued the following: 15/

ORDER

Respondent, Lizzdale Knitting Mills, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Knitgoods Workers Union Local 155 International Ladies Garment Workers Union, AFL-CIO or any organization of its employees by discharging any of its employees because of their membership in, sympathies for, or activities on behalf of the above-named union or any other labor organization.

15/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Coercing its employees in order to restrain them from engaging in union activities.

(c) Threatening employees with economic reprisal by stating it would close the business, if its employees supported the Union.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to Abelardo Ceballos, Luz Maria Villada, Marta Guerrero, and Eucaris Ceballos immediate and full reinstatement to their former position without prejudice to their seniority, and other rights and privileges or if their jobs no longer exist, to a substantially equivalent position, and make them whole in the manner set forth in the section of this decision, entitled, "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amounts of backpay due under the terms of this Order.

(c) Post at its place of business in Brooklyn, New York, copies of the attached notice marked "Appendix." ^{16/} Copies of the notice on forms provided by the Regional Director for Region 29, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt

16/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated: January 16, 1974.

/s/ David E. Davis
Administrative Law Judge

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

AFTER A TRIAL AT WHICH ALL SIDES HAD THE CHANCE TO GIVE EVIDENCE, IT HAS BEEN DECIDED THAT WE, LIZDALE KNITTING MILLS, INC., HAVE VIOLATED THE NATIONAL LABOR RELATIONS ACT AND WE HAVE BEEN ORDERED TO POST THIS NOTICE.

THE NATIONAL LABOR RELATIONS ACT GIVES YOU, AS EMPLOYEES, CERTAIN RIGHTS, INCLUDING THE RIGHT TO SUPPORT AND JOIN A LABOR UNION AND TO BARGAIN THROUGH YOUR REPRESENTATIVE, WITHOUT FEAR OF DISCHARGE OR OTHER INTERFERENCE, RESTRAINT, COERCION, OR DISCRIMINATION.

Accordingly, we give you these assurances:

WE WILL NOT discourage membership in or activity on behalf of Knitgoods Workers Union Local 155, International Ladies Garment Workers Union, AFL-CIO or any other labor organization, by discharging any of our employees or by discriminating against them in any like or related manner in regard of hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL NOT coerce our employees in order to restrain them for engaging in union activities.

WE WILL NOT threaten our employees with economic reprisals by stating that we would close the plant if they joined or supported the above-named labor organization.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed to them in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL offer to Abelardo Ceballos, Luz Maria Villada, Marta Guerrero, and Eucaris Ceballos immediate and full reinstatement to their former jobs without prejudice to their seniority or other rights and privileges, or if any of the jobs no longer exist, to a substantially equivalent job, and we make them whole for any loss of pay they may have suffered as a result of the discrimination against them.

LIZDALE KNITTING MILLS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York, 11241. Telephone No. (212) 596-5386.

[Dated 6/25/74]

[D-8658
Brooklyn, N.Y.]

* * * *

DECISION AND ORDER

On January 16, 1974, Administrative Law Judge David E. Davis issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

The Administrative Law Judge found that Respondent discharged the Ceballos family 1/ in violation of Section 8(a)(3). We agree.

As indicated by our dissenting colleague, a threshold and key issue with respect to this finding is whether Respondent, prior to the discharges, had knowledge of the dischargees' union activity, or at least suspected them of such activity. 2/

The Administrative Law Judge's findings on this issue are as follows:

1/ Abelardo Ceballos and his two sisters, Eucaris Ceballos and Marta Guerrero, and his girl friend, Luz Maria Villada.

2/ Our dissenting colleague states that knowledge of such activity is a condition precedent to an 8(a)(3) violation, but it is too well established for citation that suspicion of such activity is also sufficient to support an 8(a)(3) finding.

It is undisputed that on May 29, 1973, Union Organizers Aldrich and Quinones arrived at Respondent's plant about 4:30 p. m. and distributed union authorization cards to Respondent's employees as they were leaving the plant by a stairway. Abelardo testified that a woman came down the stairway while he was talking with the union organizers, took a union card from one of the organizers, and, after she was told by Quinones that he was trying to organize the employees, returned to the plant; that shortly thereafter he saw Gelbord, Haas, and Herskovitz ^{3/} look out from a window on the second floor of the building; and that they observed the four employees in question while they were talking with the union organizers, and while they held union authorization cards in their hands. According to Abelardo's testimony, he was 1 or 2 feet away from the outside steps leading to the entrance of the building, so that he had a clear view of those in the window and could recognize them. ^{4/} Guerrero supported Abelardo's testimony in this regard, and it was stipulated that if Eucaris and Villada were to testify that their testimony would be similar to that of Abelardo and Guerrero.

As opposing counsel could not agree on a stipulation as to all facts with respect to Respondent's premises, they each submitted reports to the Administrative Law Judge which were entered in evidence. However, both reports and the Administrative Law Judge's

3/ Respondent's president, secretary-treasurer, and forelady, respectively.

4/ Pursuant to the request of the Administrative Law Judge, he and both counsel personally viewed and inspected the premises in issue. The Administrative Law Judge found that from his observation, when he stood in this same position, he was able to clearly recognize persons looking out of window No. 6 of the plant.

own observation agree on the crucial facts that: (1) The ground in front of the outside stairway at Respondent's plant is visible to an observer in window No. 6 to a point 2 feet from the foot of the stairway; and (2) conversely, window No. 6 is visible to an observer on the ground standing 2 feet from the foot of the stairway. Accordingly, the Administrative Law Judge found it plain that Abelardo and the others could be seen by Respondent's officials on May 29, as Abelardo testified, and it is likewise obvious that Abelardo and the others could plainly see Respondent's officials from the point Abelardo placed himself in his testimony (1 or 2 feet away from the bottom of the steps). ^{5/} In conclusion, therefore, on the basis of both counsels' reports and his own observation of the premises and the demeanor of the witnesses, the Administrative Law Judge credits the testimony of Abelardo, Guerrero, and Quinones that the Ceballos group was observed by Respondent's officials on May 29 about 4:30 p. m., when Aldrich and Quinones were talking to the Ceballos group at the bottom of the outside stairway. And on the basis of this conclusion, he impliedly finds that on May 29 Respondent acquired knowledge, or at least a suspicion, of the dischargees' union activity.

5/ As both counsels' reports state that there is visibility from window No. 6 to a point on the ground 2 feet away from the bottom of the steps, there would certainly be visibility of a person of normal height even if he were standing only 1 foot away from the bottom of the steps. Our dissenting colleague relies heavily on the further statement in Respondent's report, "so that a person standing within two feet of the stairway cannot be seen from the window." Unless the person had less height than a midget, this would be a physical impossibility -- as indicated, the height of a normally statured person even standing only 1 foot from the staircase bottom would place him in view of the officials at window No. 6.

Our dissenting colleague concedes that the law applicable to credibility findings is that stated in Standard Dry Wall Products, ^{6/} viz, that it is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless a clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. As further stated by the Board in that case, the demeanor of witnesses is a factor of consequence in resolving issues of credibility, and as the Administrative Law Judge, but not the Board, has had the advantage of observing the witnesses while they testified, it is our policy to attach great weight to an Administrative Law Judge's credibility findings insofar as they are based on demeanor. As indicated above, the Administrative Law Judge in the instant case based his credibility findings on the factual issue in question in part on the demeanor of the witnesses, which factor is to be given great weight. He also based such findings on his own observation of Respondent's premises, which in this situation is also entitled to great weight, as the Board was unable to do this. Further, as demonstrated above, the crucial objective physical factors, as agreed to by opposing counsel, support his credibility findings. Finally, as further found by the Administrative Law Judge, and discussed infra, on the very next day after the incident discussed above, Respondent's forelady (one of the window watchers of the union activity) unlawfully threatened the employees involved with discharge if they had signed union cards, which lends additional objective support to the conclusion that knowledge, or at least suspicion, of such union activity was acquired by Respondent on

6/ Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enforced 188 F.2d 362 (C. A. 3, 1951).

the previous day in the window watching incident. Surely Respondent's forelady did not "divine" such obvious knowledge, or suspicion, of the employees' union activity on the previous day. Thus, contrary to our dissenting colleague, there is no evidence whatsoever to support a reversal of the Administrative Law Judge's credibility findings with respect to this incident. Rather, a clear preponderance of all the relevant objective evidence, when added to his reliance on the demeanor of the witnesses and his own physical observation of Respondent's premises, convinces us that his credibility resolutions on this incident were clearly correct.

In similar fashion, in whole or at least in part on the basis of the demeanor of the witnesses, the Administrative Law Judge made the following additional credibility findings, and resulting findings of violations of the Act:

1. He credits Abelardo's testimony that, on the day following the initial union activity described above, Respondent's forelady, Herskovitz, threatened Abelardo and his group with discharge if they had signed union cards, and that by such conduct on May 30 Respondent violated Section 8(a)(1).

2. There is no dispute that on the very next day, May 31, Abelardo and his group were informed that they were being laid off for lack of work. The Administrative Law Judge credits Abelardo's testimony that he protested to Gelbord that Gelbord had hired a man on May 30 for the same job he was doing, and had also hired other personnel during that week; and Abelardo added that he knew the reason they were being discharged was because they had signed union cards. Gelbord conceded that he had told Abelardo and his group that they had been laid off because work was slow, but he then testified

that this was not factually true, and that the actual reason was his suspicion that the group had been stealing sweaters from Respondent. The Administrative Law Judge does not credit Respondent's stated reasons for the discharge either to the effect that work was slow, or that the discharges resulted from its suspicion that the group was stealing Respondent's sweaters -- the former was an admitted falsehood, and the latter was only a suspicion, and the two together represented "shifting" defenses which indicate that both were pretexts.

3. On June 4, Quinones, Aldrich, and Chief Organizer Lewis accompanied the Ceballos group to the plant in an attempt to secure the reinstatement of the group. Upon entering the plant, Lewis handed his business card to Gelbord and stated that as Gelbord had discharged the group because of their union activity, he was requesting their reinstatement. The Administrative Law Judge credits the testimony of Quinones that Gelbord refused to reinstate them, saying that he would never "accept the Union," that he would rather close down the shop, and that he then refused to talk further with Lewis and tore up Lewis' card. The episode ended when Herskovitz, in the presence of other employees, ordered the union organizers and the Ceballos group to leave the plant, which they did. The Administrative Law Judge finds that Herskovitz, by ordering the union representatives to get out in the presence of other employees when the union representatives were present on legitimate business, engaged in coercive conduct.^{7/}

7/ The Administrative Law Judge finds that this incident is sufficiently covered in the allegations of par. 8 of the complaint, and that it was fully litigated. We disagree with the former, but agree with the latter as a basis for adopting this finding.

He also finds that the entire incident, including Gelbord's conduct, demonstrates Respondent's animus toward the Union and its employees' union activity.

4. As indicated above, the Administrative Law Judge discredits Respondent's testimony that the Ceballos group was discharged for suspected thievery of sweaters. He bases this credibility finding not only on his analysis of the record and the inferences to be drawn therefrom, but also upon his observation of the witnesses. He concludes that this defense was contrived as a pretext after the discharges, and that the real reason for the discharges was the dischargees' known, or suspected, union activity.

We agree, on the basis of the Administrative Law Judge's credibility findings which are based in whole or in part on the demeanor of the witnesses, and also on the basis of the following facts and the inferences to be drawn therefrom: (1) Respondent's acquisition of knowledge, or at least suspicion, of the union activity of the Ceballos group on May 29, the very first day of such activity; (2) Respondent's unlawful threat of discharge to the group if they had signed union cards on the very next day, May 30; (3) Respondent's discharge of the group on the very next day, May 31; (4) the shifting reasons given for the discharges, the first of which was admittedly untrue; and (5) the coercive eviction of the union representatives from the plant on June 4, and Gelbord's statements just prior thereto that he would never accept the Union but would rather close down the shop, all of which constitute evidence of Respondent's animus toward the Union and its employees' union activity.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order

the recommended Order of the Administrative Law Judge and hereby orders that Lizzdale Knitting Mills, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D. C. June 25, 1974.

John H. Fanning, Member

John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

MEMBER KENNEDY, dissenting:

For the reasons described below, I do not agree with my colleagues' decision to adopt the opinion of the Administrative Law Judge. I would dismiss the complaint in its entirety.

The Administrative Law Judge's attitude towards the parties in this case is reflected in the following quotation from his Decision:

In my view, it is quite apparent that Respondent's witnesses were participants in a calculated plan to deceive the Administrative Law Judge assigned to adjudicate this case.

It is unfortunate that the Administrative Law Judge felt personally challenged by Respondent's witnesses. It is unfortunate because I find nothing in the record which supports such a challenge. More unfortunate is the obvious impact which it had on his Decision. It is clear to me that the violations found are not derived from the record evidence, but from the Administrative Law Judge's suspicions. I am unwilling to adopt his predilections that Respondent violated the Act.

The conclusion reached by the Administrative Law Judge is based upon his belief that the General Counsel's witnesses were universally truthful while Respondent's witnesses were not. This credibility determination, in turn, is based in part upon the Administrative Law Judge's inadequate and inaccurate summary of the testimony, and in part upon his belief that General Counsel's witnesses were "simple people who are interested only in seeking redress of their grievances"

I am mindful that an Administrative Law Judge's decision to entirely credit the testimony of one party's witnesses, while entirely discrediting the opposing party's witnesses, is not sufficient, in and

of itself, to establish bias or partiality.^{8/} Understandably, the Board is reluctant to overrule an Administrative Law Judge's credibility resolutions unless a clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect.^{9/}

It is true, however, that "[t]he Act commits to the Board itself, not to the Board's [Administrative Law Judge], the power and responsibility of determining the facts as revealed by a preponderance of the evidence."^{10/} In my view, the Board cannot abdicate its responsibility as the ultimate finder of fact when objective matters of record fail to support the conclusions of the Administrative Law Judge. As described below, I am convinced that all of the relevant evidence -- including the testimony either totally ignored by the Administrative Law Judge or summarily dismissed by him without explanation -- preponderates against a finding that Respondent violated the Act.

I. Discharge of the Ceballos Family

A. The Knowledge Finding

The Administrative Law Judge found that Respondent discharged the Ceballos family ^{11/} on May 31, 1973, in reprisal for their support of the Union. He found further that Respondent's knowledge of their union activities was acquired on May 29 when three management officials ^{12/} observed the Ceballos family being solicited by two union

8/ E.g., Bachrodt Chevrolet Co., 186 NLRB 1035, fn. 2, citing N. L. R. B. v. Pittsburgh Steamship Co., 377 U.S. 656, 659.

9/ Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3).

10/ Standard Dry Wall Products, Inc., supra.

11/ Abelardo Ceballos, his two sisters, Eucaris Ceballos and Marta Guerrero, and his girl friend, Luz Maria Villada.

12/ Hyman Gelbord (president), Imre Haas (secretary-treasurer), and Ella Herskovitz (forelady).

organizers in front of the entrance to Respondent's plant. The General Counsel agrees with Respondent that such an observation is a physical impossibility.

The structure of the entrance to Respondent's plant is crucial. One enters the building through a door located at the top of eight stair steps which run adjacent to the side of the building. A roof protruding from the building covers both the steps and the door.

As found by the Administrative Law Judge, Abelardo Ceballos testified that he and his relatives were standing within 1--2 feet of the steps when they were being solicited. According to one of the union organizers, the Ceballos family was standing on the steps during the solicitation. In either event, it is undisputed that the employees were no further than 2 feet away from the steps while engaging in what the Administrative Law Judge finds to be the union activities which precipitated their discharge.

At the suggestion of the Administrative Law Judge, an inspection was made of Respondent's premises. Thereafter, posthearing statements regarding the physical condition of the premises were submitted to the Administrative Law Judge by both Respondent and the General Counsel. While these statements do not agree in all respects, on two points they are in complete accord -- (1) the ground within 2 feet of the stairs is not visible from the second story window allegedly utilized by Respondent's officials, and (2) the window in question is not visible to anyone standing within 2 feet of the stairs. ^{13/} The

13/ The brief of the General Counsel to the Administrative Law Judge (which was refiled with the Board) reinforced this crucial fact wherein it is stated at p. 6: "In fact it is possible to see within 2 feet of the outside of the stairway from window #6."

reason: the roof protruding over the stairs completely blocks the view. 14/

Having requested the submission of such statements, the Administrative Law Judge thereupon completely ignores them. He chooses instead to find, on the basis of his own observation, that "if one stands on a chair looking out of window No. 6, 15/ one has a clear view of persons standing on the bottom two steps of the outside stairway." This finding is a physical impossibility if Respondent and the General Counsel are to be believed.

The Administrative Law Judge also distorts a portion of Respondent's statement 180 degrees in an effort to bolster his finding. The Administrative Law Judge quotes from paragraph 1 of Respondent's statement as follows: "The ground in front of the outside stairway at Respondent's plant is visible to an observer in window No. 6 to a point two feet from the front of the stairway." Accordingly, states the Administrative Law Judge, Respondent "concedes" that the

14/ My colleagues contend in fn. 5 that it is possible to see someone standing 1 foot away from the stairway because all humans have height. The validity of this conclusion, of course, depends not only upon the height of the individual involved, but also upon the angle formed by the roofline of the protruding roof and the line of sight from window No. 6 to the outside edge of the roof. Since there is no evidence on these matters, their conclusion is pure speculation.

In any event, it is clear that both the General Counsel and Respondent were aware of the "height factor." In describing the visibility from windows Nos. 5 and 6, the General Counsel refers to an observer "five feet tall" while Respondent refers to an observer "of normal height."

15/ Since the bottom of the window is located 5 feet from the floor, all agree that in order to see anything at all, one must stand on a chair and push the upper part of the body through the open window.

employees who were standing within 2 feet of the stairs could plainly see, and be seen, by officials leaning out of window No. 6. That Respondent meant precisely the opposite (i.e., that an observer in the window could see everything but the 2 feet adjacent to the steps) is evident from the remaining portion of paragraph 1 which the Administrative Law Judge chose not to quote -- "so that a person standing within two feet of the stairway cannot be seen from the window." I do not think this Board should ignore the gross unfairness of such a partial quote.

To summarize: In order to find that Respondent had knowledge of the dischargees' union activities (a condition precedent to an 8(a)(3) violation), the Administrative Law Judge: (1) made findings of fact which both Respondent and the General Counsel agree are physical impossibilities, and (2) completely distorted Respondent's statement by quoting only a portion thereof. In my judgment, the Administrative Law Judge's finding with respect to knowledge is not only not supported by a preponderance of the evidence, but the method utilized in making that finding casts serious doubt as to the legitimacy of his other factual findings and conclusions of law in this case.

B. Summary Rejection of Respondent's Defense

Respondent contends that the Ceballos family was discharged because they were suspected of stealing sweaters from the plant. The specifics giving rise to this suspicion were described in the testimony of six witnesses, two of whom were completely disinterested. The Administrative Law Judge failed to mention, much less discuss, many of the specifics of Respondent's defense. Instead he summarily rejected it as being "unworthy of the slightest credibility." Such a general condemnation is not a satisfactory substitute for an analysis of the evidence.

In late March 1973, Abelardo Ceballos was assigned the task of cleaning the plant on Friday evenings after the other workers had left. He was assisted in this task by his three relatives. It was also in late March when Respondent first began experiencing sweater shortages. ^{16/} The losses continued through April and into May. On or about May 15, Forelady Herskovitz decided to inspect all bags and other containers being carried by employees leaving the plant. At one point she observed two members of the Ceballos family -- Luz Maria Villada and Eucarias Ceballos -- approaching the plant exit carrying a paper grocery bag. When the employees noticed Herskovitz, they stopped, reversed direction, and proceeded into a dressing room. They emerged shortly thereafter -- without the bag -- and left.

Respondent called as witnesses two employees who were in the dressing room when Villada and Ceballos entered. They testified that upon noticing the abandoned bag, they made an attempt to catch Villada and Ceballos but were unable to do so. The bag was then given to Herskovitz who opened it and discovered several of Respondent's sweaters. This incident prompted Respondent to suspect the Ceballos family as the source of its losses. Accordingly, their activities were closely monitored.

On Friday, May 25 -- an evening in which the Ceballos family was scheduled to clean the plant -- a number of sweaters were carefully placed on a packing table. When Respondent's president returned from answering a telephone call, the sweaters had been disturbed and it appeared that some were missing. Again, suspicion focused upon the Ceballos family. Respondent did not act at that time since it lacked

16/ In fn. 14 of his Decision, the Administrative Law Judge noted that Respondent produced records at the hearing in support of this claim.

concrete evidence to link them with the thefts and it was impossible at that time to verify that additional sweaters had actually been stolen.

On May 31, a comparison of the cutting orders with the shipping invoices confirmed Respondent's suspicion that additional sweaters had, in fact, been stolen.^{17/} It was this verification which precipitated the discharges. Mindful that an airtight case of theft could not be established, Respondent told the Ceballos family that their terminations were the result of a lack of work. It is undisputed that the discharges brought an end to the sweater shortages.

As already noted, the Administrative Law Judge failed to discuss much of Respondent's defense. Indeed, he gives no hint that two witnesses testified as to having seen Luz Maria Villada and Eucaris Ceballos with a bag of Respondent's sweaters. He summarily rejects Respondent's defense as being "contrived"; "a calculated plan to deceive the Administrative Law Judge"; "an obvious contrivance I will not belabor"; "entirely without any foundation from its very inception"; and, "unworthy of the slightest credibility."

In my judgment, conclusionary generalizations such as these are no substitute for reason. Indeed, resort to such generalizations suggests

^{17/} It was not until the order was shipped and the comparison made that Respondent could be certain that additional thefts had occurred. The cutting orders indicate how many sweaters are to be cut from available material, and thus how many are to be made. The shipping invoices indicate how many completed sweaters are actually shipped. During the manufacturing process, the sweaters are in various stages of completion throughout the plant and it is virtually impossible at that point to conduct an accounting. When the order was finally shipped on May 31, the loss was confirmed.

the absence of reason to support the conclusion reached. If this Board is to discharge its responsibility to evaluate the recommendations of its Administrative Law Judges, we must be apprised of how they reach their decisions, and why. We cannot operate in a vacuum. I will not rubber stamp an Administrative Law Judge's failure to particularize a party's claims and then dismiss them as being "contrived." ^{18/}

To the extent that the Administrative Law Judge's rejection of Respondent's defense is based upon his finding that the General Counsel's witnesses were credible while Respondent's witnesses were not, his decision is subject to the same criticism -- broad generalizations with no rationale stated to support his conclusions. The Board expects Administrative Law Judges to indicate carefully and specifically how they arrive at their credibility resolutions, and failure to do so requires their rejection. ^{19/} In my view, the large body of mutually corroborative testimony offered by Respondent's witnesses cannot be ignored simply by characterizing the Ceballos family as "simple people." ^{20/}

18/ In the only exception, the Administrative Law Judge finds that Luz Maria Villada and Eucaris Ceballos never attempted to steal sweaters in view of their testimony that "they did not use the restroom at night inasmuch as they left their coats near their work benches." This testimony is completely wide of the mark. No claim has been made that the bag was left in the restroom when they retrieved their coats to go home. The testimony was that they were leaving the plant (presumably with their coats on) when they saw Herskovitz inspecting packages and then went into the restroom in order to dispose of the package.

Nor do I find it incredulous that the president of a sizeable corporation might be called away from the plant by a telephone call in his office.

19/ Allstate Insurance Company, 209 NLRB No. 68 (1974); cf. M&S Company, 108 NLRB 1193, 1194, fn. 3 (1954).

20/ The unreliability of the credibility resolution is further highlighted by the single instance in which the Administrative Law Judge

Having rejected the Administrative Law Judge's credibility determinations, the record evidence convinces me that Respondent did not discriminatorily discharge the Ceballos family. It is undisputed (1) that the sweater losses did in fact occur; ^{21/} (2) that the losses began at about the time Abelardo Ceballos was assigned Friday evening cleanup duty; and (3) that the losses ceased simultaneously with the Ceballos family's discharge. The testimony of all of Respondent's witnesses regarding the aborted attempt of Luz Maria Villada and Eucaris Ceballos to steal sweaters was consistent throughout and mutually corroborative. In addition, two of these witnesses -- the two in the restroom who saw Villada and Ceballos abandon the bag full of sweaters -- are totally disinterested, with no personal stake in the outcome of these proceedings.

It is also undisputed that at least 15 other employees who engaged in union activities were not discharged. This fact, when combined with the absence of company knowledge of the Ceballos family's union activities, convinces me the evidence fails to establish that Respondent's discharge of the Ceballos family did violate Section 8(a)(3).

II. Herskovitz' Threat

The Administrative Law Judge further found that Respondent violated Section 8(a)(1) on May 30, 1973, when Forelady Herskovitz made an unlawful threat to a gathering of employees, including the Ceballos family, while they were eating lunch. According to Abelardo

20/ (Cont'd) discussed testimonial content. Respondent's president, Gelbord, is discredited because he testified that persons standing within 2 feet of the front steps could not see anyone from window No. 6 even if the person in the window was standing on a chair. As noted above, Respondent and the General Counsel agree that such is actually the case, so that it is the Administrative Law Judge -- not Gelbord -- who is in error.

21/ See fn. 14 of the Administrative Law Judge's Decision.

Ceballos, Herskovitz stated, "If somebody signed union cards, no more work, fired." Abelardo also indicated that it was necessary for him to translate Herskovitz' remark into Spanish so that the other employees, who did not speak English, would understand. According to the testimony of Guerrero, a member of the Ceballos family, Abelardo's translation was as follows: "If they signed cards the factory would be closed and that everyone would be fired one by one." Three employees who regularly ate lunch with the Ceballos family denied that Herskovitz made any threatening remarks or that Abelardo ever made any such translation.

As before, the Administrative Law Judge's method of resolving credibility is to ignore portions of the record and to misquote others. Thus, Herskovitz is discredited, in part, because she "did not make a specific denial of this incident." The inaccuracy of this finding is indicated by the following portion of Herskovitz' testimony:

Now, there's been evidence here that on or about May 30th you said to a group of workers, composed of the Ceballos and two other workers, that if anybody signed up for the union they'd be fired.

Did you ever make such a statement?

A. No never.

Q. There's also evidence that when you made this statement, Mr. Ceballos translated it into Spanish for the benefit of his sisters?

A. Never. Never, I never spoke to him about union.

Plainly the Administrative Law Judge misstates the record when he says the incident was not denied. I will not accept credibility resolutions based upon misstatements of the record.

The Administrative Law Judge credits the inconsistent testimony of Abelardo Ceballos and Guerrero, ^{22/} and ignores the mutually corroborative testimony of the three employees (each of whom was a disinterested witness) who denied that any threats were made. I am unwilling to accept the Administrative Law Judge's method of resolving credibility by giving Respondent's witnesses' testimony the "silent treatment." ^{23/} On the entire record, I credit the testimony of the four witnesses who denied that any threat was ever made, and would accordingly dismiss this portion of the complaint.

III. The June 9 Commotion

Finally, the Administrative Law Judge found that Respondent violated Section 8(a)(1) when Herskovitz, in the presence of employees, asked certain union officials to leave Respondent's premises. On June 9, 1972, three union officials accompanied the Ceballos family to the plant in an attempt to secure the latter's reinstatement. It is undisputed that the presence of the union officials caused approximately 15 employees to start yelling, pushing, throwing objects, etc. As a result, Herskovitz asked the union officials to leave and they did so.

The Administrative Law Judge found that Herskovitz actually "spearheaded" the commotion, and her request that the union officials leave, made in the presence of other employees, constituted "coercive conduct." These findings are unsupportable on several grounds. First, as the Administrative Law Judge himself concedes, such conduct is not

^{22/} Ceballos testified that Herskovitz threatened to fire all employees who signed authorization cards, whereas Guerrero testified that the threat also consisted of a promise to close the plant.

^{23/} Cf. Allstate Insurance Co., supra.

specifically alleged in the complaint. He finds, however, that the incident is nevertheless "sufficiently identified" by the allegations contained in paragraph 8 of the complaint. 24/ I cannot comprehend how a request that union officials leave Respondent's premises in order to quell an employee commotion is "sufficiently identified" by an allegation concerning threats of employee discharge.

Second, while the fact that a June 4 commotion involving several employees may have been "fully litigated" (indeed, it was never disputed), Herskovitz' leadership thereof was not. The Administrative Law Judge's conclusion that Herskovitz "spear-headed" the commotion is entirely without support in the record. 25/

Finally, while the union representatives' efforts to secure the reinstatement of the Ceballos family may have initially provided them with a legitimate reason for going to Respondent's premises, their presence clearly had a disruptive effect on business operations. Under such circumstances, Herskovitz' request that they leave was not an unfair labor practice. 26/

24/ Par. 8 charges Respondent with violating Sec. 8(a)(1) by threatening employees with "discharge and other reprisals if they become or remained members of the Union and if they gave any assistance or support to it."

25/ Union Agent Alex Quinones testified that Herskovitz asked him to leave (a fact Herskovitz admitted) but made no claim that she in any way started or led the commotion.

26/ Cf. Stuart F. Cooper Co., 136 NLRB 142, 145 (1962). In Daylin Inc., Discount Division, 198 NLRB No. 40 (1972), the Board held that respondent did not violate Sec. 8(a)(1) when it caused the arrest of two union officials who refused to accede to respondent's request that they leave the premises.

For the foregoing reasons, I conclude that the Administrative Law Judge's Decision does not accurately reflect the record in this case. In my judgment, the evidence in this case does not preponderate in favor of a violation. Accordingly, I would dismiss the complaint in its entirety.

Dated, Washington, D.C. June 25, 1974.

Ralph E. Kennedy, Member
NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT NO. 1(c)

COMPLAINT AND NOTICE OF HEARING

It having been charged by Knitgoods Workers Union, Local 155 International Ladies Garment Workers Union, AFL-CIO, herein called the Union, that Lizzdale Knitting Mills, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations -- Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by the Union on June 6, 1973, and served by registered mail upon Respondent on or about June 7, 1973.
2. Respondent is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.
3. At all times material herein, Respondent has maintained its principal office and place of business at 8000 Cooper Avenue, in the Borough of Queens, City and State of New York, where it is, and has been at all times material herein, continuously engaged in performing knitting contracting services and other related services in the garment industry.
4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of

its business operations, caused to be manufactured, ~~sold~~ and distributed at its plant, products valued in excess of \$500,000, of which products valued in excess of \$50,000, were furnished to firms located in New York State, each of which enterprises annually produces knitted goods valued in excess of \$50,000 which it ships directly out of the state wherein said enterprise is located.

5. Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. The Union is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

7. (a) Ella Herskovitz, is, and has been at all times material herein, an agent of Respondent acting on its behalf, and a supervisor thereof within the meaning of Section 2(11) of the Act.

(b) Hyman Gelbord, and Imre Haas are, ~~and~~ have been at all times material herein, the President and Secretary-Treasurer, respectively, of Respondent, acting on its behalf, and agents thereof.

8. On or about May 30, 1973, June 4, 1973, and on various other dates presently unknown during the months of May and June, 1973, Respondent by Ella Herskovitz, its supervisor, Hyman Gelbord its President and agent, Imre Haas, its Secretary-Treasurer and agent and by other agents and supervisors presently unknown, threatened its employees with discharge and other reprisals if they became or remained members of the Union and if they gave any assistance and support to it.

9. On or about May 31, 1973 Respondent laid off its employees, Abelardo Ceballos, Luz Maria Villada, Marta Guerrero and Eucaris Ceballos.

10. Since the date of the layoff of the employees as described above in paragraph 9, Respondent has failed and refused to recall, or offer to recall, said employees to their former or substantially equivalent positions of employment.

11. Respondent laid off and thereafter failed and refused to reinstate its employees Abelardo Ceballos, Luz Maria Villada, Marta Guerrero, and Eucaris Ceballos, as described above in paragraphs 9 and 10, because said employees joined and assisted the Union and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

12. By the acts described above in paragraphs 8 through 11, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

13. By the acts described above in paragraphs 9 through 11, and by each of said acts, Respondent discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

14. The acts of Respondent described above in paragraphs 8 through 11, occurring in connection with the operations of Respondent described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the

several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 5th day of September, 1973 at 11:00 a.m. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 2nd day of August, 1973.

/s/ Samuel M. Kaynard

Regional Director

National Labor Relations Board

Region 29

16 Court Street

Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES
IN FORMAL HEARINGS HELD BEFORE THE
NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS
PURSUANT TO SECTION 10 OF THE
NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the pre-hearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any pre-hearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing

thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GENERAL COUNSEL'S EXHIBIT NO. 1(e)

LIZDALE KNITTING MILLS, INC. as its answer to the complaint:

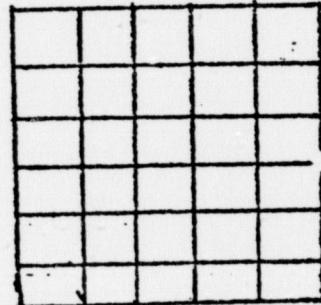
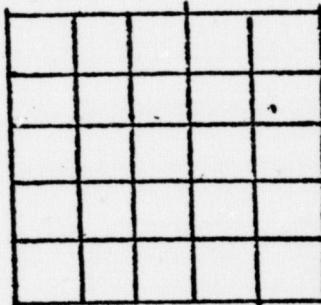
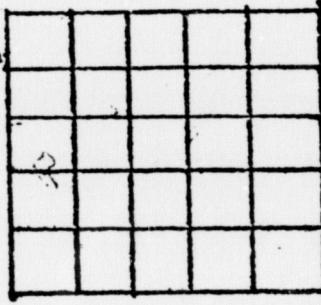
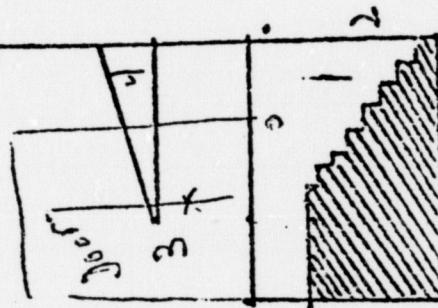
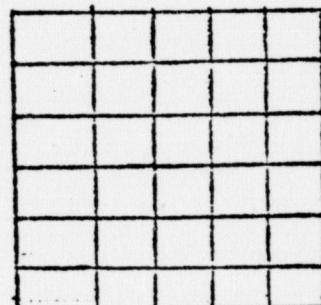
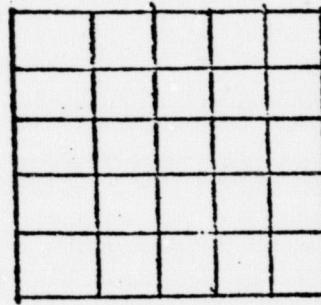
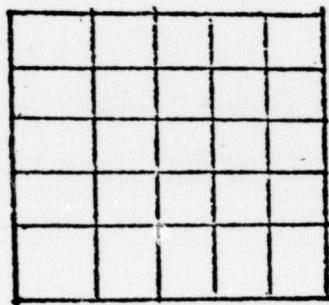
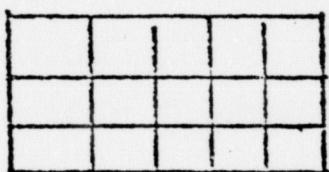
1. Admits the allegations set forth in paragraphs 1, 2, 3, 5, 6, and 9.
2. Denies the allegations of paragraph 4 except admits that during the past year, which year is representative of its annual operations, respondent manufactured for others products having a value in excess of Five Hundred Thousand (\$500,000.00) Dollars and that the finished products have a value in excess of Fifty Thousand (\$50,000.00) Dollars to firms in and out of the State of New York.
3. As to paragraph 7 of the complaint respondent denies as to sub-paragraph (a) said allegations but admits that ELLA HERSKOVITZ is a supervisory employee of respondent and as to sub-paragraph (b) admits the allegations thereof.
4. Respondent denies the allegations of paragraph 8 and specifically denies that it or any of its supervisory personnel at any time threatened any employee with discharge or reprisal in any form if said employee became or remained members of the Union or gave assistance or support thereto.
5. Denies the allegations of paragraph 10 except admits that it has not recalled the named employees to work.
6. As to paragraph 11, denies the allegations thereof except admits that said employees have not been recalled to work.
7. Denies each and every allegation of paragraphs 12, 13 and 14.

8. Respondent respectfully submits that the charges as alleged are without foundation and that the complaint should be dismissed.

Dated at New York, New York this 13th day of August, 1973.

ROBERT W. ADLER
Attorney for Respondent,
Lizdale Knitting Mills, Inc.
Office & P.O. Address
425 Park Avenue South
New York, New York

RESPONDENT'S EXHIBIT NO. 1



ADMINISTRATIVE LAW JUDGE'S EXHIBIT NO. 1

KIMMELL AND KIMMELL
Attorneys at Law
290 Old Country Road
Mineola, New York 11501

November 6, 1973

Administrative Law Judge David E. Davis
National Labor Relations Board
450 Golden Gate Avenue
San Francisco, Cal.

Re: LIZDALE KNITTING MILLS, INC.
Case No. 29-CA-3426

Dear Judge Davis:

We have not been able to agree with General Counsel on a stipulation concerning the physical view of Respondent's premises that was taken as part of the evidence in the above case. We, accordingly, submit herewith what we believe to have been the correct state of facts on this matter as follows:

1. The ground in front of the outside stairway at Respondent's plant is visible to an observer in window #6 to a point two feet from the front of the stairway [so that a person standing within two feet of the stairway cannot be seen from this window.]
2. The ground in front of the outside stairway at Respondent's plant is visible to an observer in window #5 to a point six feet from the foot of the stairway so that a person standing within six feet of the stairway cannot be seen from this window.
3. Window #6 is visible to an observer on the ground standing two feet or more in front of the foot of the outside staircase, but not visible if standing within two feet.
4. Window #5 is visible to an observer on the ground standing six feet or more in front of the foot of the outside staircase, but not visible if standing within six feet.

5. The bottom of windows #5 and #6 are approximately five feet above the beginning of the second floor of the plant.

6. It is possible for an observer of normal height if he stands on a chair and sticks his head and upper part of his body out the window #6 to see the ground at a point two feet or more in front of the foot of the outside staircase.

7. It is possible for an observer of normal height if he stands on a chair, climbs above the obstruction caused by an air conditioner in the window #5, and sticks his head and upper part of his body out of the window to see the ground at a point six feet or more in front of the foot of the outside staircase.

8. A person inside the plant and looking out of either window #5 or window #6 is not visible to a person standing at whatever distance in front of the outside staircase unless such person inside the plant at the window first opens the window pane, climbs on a chair and sticks his head and upper part of his body out of the window.

9. A three-foot high white concrete wall extends from the foot of the outside staircase for a distance of seven feet. The wall is visable to an observer in window #6 under the conditions set forth in paragraphs 1, 6 and 8 above and is visable to an observer in window #5 under the conditions set forth in paragraphs 2, 4 and 8 above.

10. At a height above the ground floor where the second floor of the plant begins, there is a solid canopy roof above the outside staircase which serves to block the view of the ground from windows #6 and #5 and the view of these two windows from a person on the ground under the conditions set forth in paragraphs 1, 2, 3, 4, 6, 7 and 8 above.

Very truly yours,
KIMMELL & KIMMELL
By: Leonard S. Kimmell

cc: Vincent J. Coffey, Esq.
Counsel for the General Counsel
Lizdale Knitting Mills, Inc.
LSK/pt

ADMINISTRATIVE LAW JUDGE'S EXHIBIT NO. 2

NATIONAL LABOR RELATIONS BOARD
Region 29
16 Court Street
Brooklyn, New York 11241

November 8, 1973

National Labor Relations Board
Division of Judges
450 Golden Gate Avenue
13108 Federal Building, Box 36047
San Francisco, California 94102
Att: Administrative Law Judge David E. Davis

Re: Lizdale Knitting Mills Inc.
Case No. 29-CA-3426

Dear Judge Davis:

Pursuant to your instructions at the hearing in the above captioned matter on October 23 and 24, 1973 Counsel for the General Counsel hereby stipulates to the following facts concerning the view taken at Respondent's plant at 8000 Cooper Avenue, Queens, New York on October 24, 1973. To avoid confusion reference is made to the labeling of windows and areas as set out in Respondent's Exhibit No. 1. We have not been able to agree with Respondent on a joint stipulation as to these facts. Respondent's Counsel will submit his own statement in letter form also pursuant to your instructions.

1. The ground in front of the outside stairway at Respondent's plant is visible to an observer in window #6 to a point two feet from the foot of the stairway.
2. The ground in front of the outside stairway at Respondent's plant is visible to an observer in window #5 to a point five feet from the foot of the stairway.
3. Window #6 is visible to an observer on the ground standing 2 feet in front of Respondent's outside stairway.

4. Window #5 is visible to an observer on the ground standing five feet in front of Respondent outside stairway.
5. Window's #5 and #6 begin five feet above the 2nd floor of Respondent's plant.
6. It is possible for an observer five feet tall to peer out of the lower panes of window #6 and observe a point on the ground four feet in front of Respondent's outside stairway.
7. It is possible for an observer five feet tall, if he stands on a chair, to stick his head out of window #6 and see the ground at a point two feet in front of Respondent's outside stairway.
8. It is possible for an observer five feet tall if he stands on a chair, despite some obstruction caused by air conditioner in this window, to see the ground at a point five feet in front of Respondent's outside stairway.
9. A three feet high white concrete wall extends from the foot of Respondent's stairway for a distance of seven feet. This wall is visible to an observer in window #6 to a point two feet from the foot of the stairway and to an observer in window #5 to a point five feet from the foot of the stairway.

/s/ Vincent J. Coffey
Counsel for the General Counsel

cc: * Kimmell & Kimmell
290 Old Country Road
Mineola, New York
* Local 155, I. L. G. W. U.
430 Saint Nicholas Avenue
New York, New York
* Lizzdale Knitting Mills Inc.
8000 Cooper Avenue
Queens, New York

[EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS]
1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

* * * *

16 Court Street
Brooklyn, N.Y.
October 23, 1973

* * * *

6 MR. COFFEY: General Counsel calls Alex Quinones to the stand.

Whereupon,

ALEX QUINONES

was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

7 **DIRECT EXAMINATION**

Q. (By Mr. Coffey) Would you state your full name and address? A. My name is Alex Quinones. I live on 629 Hart Street, Brooklyn, 21, New York.

JUDGE DAVIS: How do you spell your first name?

THE WITNESS: A-l-e-x.

Q. (By Mr. Coffey) Mr. Quinones, what do you do for a living? A. I work for Local 155 as an organizer.

Q. And how long have you been an organizer for Local 155? A. Close to six months, I think.

Q. When was the first time you went to Lizdale Knitting Mills? A. At the end of the month of May.

Q. And can you tell me the date that you went for the first time? A. May 29th.

Q. And what happened on May 29th? A. On May 29th we met the workers as they came down from the shop.

JUDGE DAVIS: You say "we".

Who was the "we"?

THE WITNESS: Willard Aldrich and I.

8

JUDGE DAVIS: Who is Aldrich?

THE WITNESS: The other organizer.

JUDGE DAVIS: All right.

Q. (By Mr. Coffey) And when you met the workers coming out of the shop, what time was this? A. Oh, 4:30.

Q. And what did you do when you met the workers coming out of the shop? A. We started to give them cards.

Q. What kind of cards? A. Authorization cards.

MR. KIMMELL: Your Honor, I don't mean to object.

Perhaps we can move the hearing along.

We'll concede that they organized and attempted to organize employees of this company.

JUDGE DAVIS: Well, it would take just as long for him to recite -- it has to be in the record, so he's getting it in pretty fast.

MR. KIMMELL: No dispute.

Q. (By Mr. Coffey) Okay.

Can you tell us what happened when you were giving out authorization cards to the employees as they came out of the shop?

9

A. As I said before, workers were coming out at 4:30, the Ceballos family. We usually refer to them as --

JUDGE DAVIS: Just a minute.

Talk slower and keep your voice up because I can't hear you.

THE WITNESS: Okay.

A. (Continued) Luz Maria -- correct me if I'm wrong because there are four names -- Abelardo Ceballos, Eucaris Ceballos, Marta Guerrera.

Q. Are these people related? A. Yes.

Q. In what way? A. Sisters and I believe now one is married to one of the other girls.

Q. Is Abelardo married to one of the girls? A. Yes.

Q. Which one? A. Luz Maria.

Q. And the other two are Abelardo's sisters? A. Yes.

Q. Now, you say you met with these four individuals?

A. Yes.

Q. And what happened when you met with them? A. They stood in front of the shop. They asked us questions about the union, as we gave them cards.

10 As we were giving cards, another English-speaking worker came down and she also took a card.

She asked me what was the card for.

I told her that it was an authorization card for union, we were trying to organize the shop.

You see, it was a non-union shop.

As I gave her the card, she ran back upstairs with the card.

A few minutes later I notice in the window that two gentlemen, Hy and Imre, they were out in the window.

MR. KIMMELL: I'm sorry, I didn't get that.

JUDGE DAVIS: Two gentlemen what?

THE WITNESS: They were in the window overlooking --

JUDGE DAVIS: But what you said some word after two gentlemen --

Q. (By Mr. Coffey) Which two gentlemen were in the window? A. The two gentlemen sitting next to the attorney.

JUDGE DAVIS: Do you know their names?

THE WITNESS: I know the first names.

JUDGE DAVIS: What's their first names?

THE WITNESS: Hy and Imre.

MR. KIMMELL: They are the two officials of the company, your Honor.

JUDGE DAVIS: Can you name them?

11 MR. KIMMELL: Yes.

That's Mr. Imre Haas, H-a-a-s, and Mr. Hyman Gelbord, G-e-l-b-o-r-d.

JUDGE DAVIS: And the other man is?

MR. KIMMELL: Haas, H-a-a-s.

They are both officials of the company.

JUDGE DAVIS: All right.

MR. KIMMELL: But I didn't really hear what the witness said.

JUDGE DAVIS: They were looking out the window.

What did you say they were doing?

THE WITNESS: They were looking at us when we were talking to this group.

JUDGE DAVIS: From the window?

THE WITNESS: Yes.

JUDGE DAVIS: What window?

THE WITNESS: This window is right overlooking the entrance of the shop.

JUDGE DAVIS: How far up?

THE WITNESS: About 20 feet.

JUDGE DAVIS: 20 feet?

THE WITNESS: Yes, sir.

JUDGE DAVIS: What floor was it?

THE WITNESS: Second floor.

JUDGE DAVIS: Second floor?

12 THE WITNESS: Yes, sir.

JUDGE DAVIS: All right.

Q. (By Mr. Coffey) When you were being observed by Mr. Imre Haas and Mr. Hy Geltord, was there anybody else observing you besides those two? A. There was another lady. When one of them moved out, the other lady came in.

You know, one moved out, the other lady came in. You know, one moved out of the window and then the other lady came in.

Q. Do you know who that lady was? A. Yes.

Q. Who was she? A. She's the floor lady in the shop by the name of Lena.

Q. Could it have been Ella? A. Ella, excuse me.

I mixed the names up.

JUDGE DAVIS: Can we have her last name, Ella who?

MR. KIMMELL: I believe they're referring to someone called Ella Herskovitz, who is a floor lady.

Q. (By Mr. Coffey) Now, can you tell us where the people you were talking to had the cards at the time they were being observed from the window? A. Well, right on the front of the shop, on the stair.

Q. Do you know where they had their cards? A. They had them in their hands.

Q. Okay.

Now, what happened when you observed yourselves being observed from the window of the factory? A. I noticed that they were looking at us. Then we moved to the side of the shop.

Q. And what happened when you got to the side of the shop?

A. They signed the cards for us.

Q. Did anything else happen at that time? A. They signed the cards. Yes, I gave them some more cards.

Q. To whom? A. To Abelardo.

Q. Was that the end of your conversation with the Ceballos on that day? A. No.

14

I gave them the cards and I told them that since the benefits that they were getting in that shop was really bad compared to our union shop, I gave him the card and I told him to try to talk to his friends to see if he can get some cards signed and to try to bring in the union, to organize the shop.

Q. Did you return to the shop thereafter? A. Yes, I did.

Q. When did you return? A. I returned about a week later.

Q. And for what reason did you return? A. I --

MR. KIMMELL: Oh, I would object to that, why, your Honor. The facts are that he returned.

JUDGE DAVIS: I'll sustain the objection.

Q. (By Mr. Coffey) What happened after you went to -- what's the next thing that happened after you went to the plant on the day that you spoke with the Ceballoses? A. I returned to the shop and I noticed the people as they came out, they wouldn't even talk to me.

One girl that signed a card for us, she was scared. She asked me that if I can return the card for her.

Q. All right.

What is the next thing that happened, Mr. Quinones?

A. The next few days Abelardo called me home and told me that he was fired from the job, that he has been fired together with Luz Maria, Marta, and Eucaris.

15 JUDGE DAVIS: When was that?

THE WITNESS: That was the 31st.

JUDGE DAVIS: Of May?

THE WITNESS: Yes.

JUDGE DAVIS: He called you on the 31st?

THE WITNESS: Yes, sir.

Q. (By Mr. Coffey) And what happened thereafter? A. I told him that -- I believe it was on a Thursday.

I told him to wait, that I will speak to my head organizer and we will try to go back the following Monday to the shop to try to talk to Imre and Hy to try to reinstate them.

The following Monday we went to the shop. Willard Aldrich, Norman Lewis and I, went to the shop.

We went upstairs together with Abelardo, Luz Maria, Marta and Eucaris.

We went upstairs. We introduced each other to Hy and Norman Lewis handed him a card and told him to reinstate the workers because he had fired them because of the union activity.

He refused to accept them and said that he will never take them back, that he will never accept the union to come in on the shop, that he would rather close the shop down than accept the union in the shop.

16 Then we went to the office. He refused to even talk any further with Norman Lewis and tore up his business card.

JUDGE DAVIS: Who was that?

THE WITNESS: Who was --

JUDGE DAVIS: Who was it that you were talking to at this time?

THE WITNESS: I was together with the group in the office.

JUDGE DAVIS: Yes.

But, to whom were you talking?

THE WITNESS: No.

Norman Lewis was doing the talking.

JUDGE DAVIS: To whom?

THE WITNESS: To Hy.

JUDGE DAVIS: To Hy?

THE WITNESS: Yes.

JUDGE DAVIS: All right.

Q. (By Mr. Coffey) And Hy was talking back to him?

A. Yes.

Q. Was Imre present at this time? A. Imre was right to the side. He, also, was present.

Q. Did he have any conversation with anybody else besides 17 Mr. Lewis? A. Pardon me?

Q. Did Mr. Imre have any conversation with anybody besides Mr. Lewis? A. Yes.

I noticed that Mr. Imre was talking to Abelardo to the side.

Q. Did you hear what was said? A. No, I didn't.

Q. So, what happened? A. After Hy tore up the card, he told us to get out of the shop or he will call the police.

At that, we thought it was best to leave since we don't want this to generate into any violence, you know, of any kind.

Q. Okay.

MR. COFFEY: No further question of this witness, your Honor.

JUDGE DAVIS: Mr. Kimmell.

CROSS EXAMINATION

* * * * *

19 Q. (By Mr. Kimmell) Now, Mr. Quinones, on May 29th when you went out to the plant, what time did you arrive there?

A. About 3:30 o'clock.

Q. Approximately 3:00 o'clock? A. Yes, sir.

Q. When did the workers start to come out? A. They come out at different times.

Q. What time did they start to come out, the workers?

A. There are a few that come out at 3:30. The main ones, I think come out at 4:00 o'clock or 4:30.

Q. And do they come out -- A. There are some that do work a little later.

Q. If they're working overtime? A. If, yes.

Q. Yes.

But, did the main mass of workers come out together in a group?

A. Right.

Q. And that's about 4:30? A. Yes.

Q. That's the end of the day, the normal day? A. Yes.

20 Q. How many workers came out in the main group? A. I would say about 20, 25.

Q. How many workers in the whole company? Do you know?

A. I don't know the exact figure.

Q. So, about 20 workers came out in a group? A. Yes.

Q. And how many other workers came out at different times? A. A few did come out at 3:30.

Q. About how many? A. Oh, I would say about four.

Q. About four? A. Yes, I would say so.

Q. And did some come out after 4:30 in the main group?

A. Yes.

Q. What? Another four or five or 10? A. Yes.

Q. About that many? A. Yes, about that many.

Q. Now, you were there with Mr. Aldrich, I take it?

A. Right.

Q. And you had a big supply of cards? A. Yes.

21 Q. Now, did you give a card to every worker as they came out? A. Yes.

Q. And did you explain to them what you thought was the advantages of the union? A. Some just took the card and walked away with it. Some, they just stood and talked to us.

Q. And those who would talk to you, did you -- did you explain to them the advantages of being -- A. Yes.

Q. -- in the union? A. Yes.

Q. Now, how many cards altogether did you give out that day?

A. We gave out about 15.

Q. About 15? A. About 15, yes.

Q. Is that 15 or 50? A. 15.

Q. I see.

Was it possibly a little more than 15 or a little less than 15?

A. If you mean how many in total, we gave out maybe more than 15.

22 Q. Did you give a card to pretty much every worker who went by? A. Most of them, yes.

Q. You say most of them? A. Yes.

Q. Did you attempt to give one to every worker? A. Of course.

Q. And some didn't take it and some did? A. Some do and some don't.

Q. I understand.

Now, how many people actually signed cards that day?

A. The Ceballos family, Marta.

Q. I understand.

You told me that ~~these~~ four people signed cards.

How many other people signed cards? A. At that moment nobody else.

Q. Nobody else signed that day? A. No.

Q. Did any sign later? A. Yes.

Q. How many signed later? A. I --

MR. COFFEY: Objection, your Honor.

What's the relevance of this question?

23

MR. KIMMELL: I think it's relevant, your Honor, to show -- we're trying to, obviously, disprove a charge of discrimination.

Now, it's one thing to show that the people who signed cards were dismissed. And I think we have a right to rebut that by showing that many other people who signed cards were not dismissed.

JUDGE DAVIS: All right.

I'll sustain the objection.

You don't have to answer that question.

Q. (By Mr. Kimmell) Well, did other people, other than these four, sign cards? A. Yes.

Q. Now, I don't have to know the precise number, it doesn't matter to me.

JUDGE DAVIS: That's right.

Q. (By Mr. Kimmell) But, would you tell us, was it as many, twice as many, approximately? I don't want to know exactly how many, but how many more people signed cards, approximately?

MR. COFFEY: Objection, your Honor.

JUDGE DAVIS: Sustained.

MR. KIMMELL: We are not involved with an 8A5 charge here, your Honor.

JUDGE DAVIS: I understand that.

24 But the point is that's all of the more reason. If we had an 8A5 charge here you'd have the cards.

But the point is this is apparently still an organizing campaign going on and you're not entitled to know how many people signed cards.

MR. KIMMELL: Right.

I'm not asking him for the exact number, nor for the names.

JUDGE DAVIS: Not even an approximate number, you're not entitled to.

MR. KIMMELL: Okay.

Q. (By Mr. Kimmell) But more people than these four signed the cards; is that correct? A. Yes.

Q. Now, would you describe, where is this building located where the company is? A. The address is 8000 Cooper.

Q. Cooper Avenue? A. Yes.

Q. Now, is this building located in a large industrial park?

A. Yes, it is.

Q. Are these new buildings or are they quite old? A. I can't say exactly how old they are, but --

25 Q. They're not new modern buildings, are they? A. They weren't built last year.

Q. They were probably built 50 or more years ago, were they not? A. I can't say exactly.

Q. Well, are they red brick buildings? A. Red brick, yes.

Q. The type of red brick factory building that was built around the turn of the century? A. I don't know much about how many buildings are.

Q. But you would not call it a new, modern building, would you?

MR. COFFEY: Objection, your Honor.

JUDGE DAVIS: Well, he can answer that question. Do you know?

Is it a new modern building?

THE WITNESS: No, it's not a new, modern building.

JUDGE DAVIS: All right.

Q. (By Mr. Kimmell) Now, part of the building is in the industrial park, isn't it? A. Yes, it's right on 83rd Street.

Q. Now, the entrance into the building -- A. Yes.

26 Q. -- what part of the building is that on? A. 83rd.

Q. Is that at the corner of the building? A. The corner of the building?

Q. Is the entrance into the building right at the corner of the building where two sides meet? A. Yes.

Q. And is it a high flight of stairs up on the outside from the street till you get to the door of the building? A. There's a small stairs to the first floor. Then it takes a right turn and goes to the second floor.

Q. Right.

But I'm talking till you get into the building, is there an outside flight of stairs that you have to walk up? A. To what part of the building?

Q. When you're on the street and you want to go --
A. The front?

Q. When you're on the street and you want to walk into the building -- A. Yes.

Q. -- before you actually get into the building, is there a flight of stairs that you have to walk up that's on the outside of the building? A. Yes, about eight steps.

27 Q. Excuse me? A. About eight steps.

Q. One steps or eight steps? A. Eight steps.

Q. Thank you.

Now, these eight steps, is there a wall on the far side of these eight steps? A. A wall?

Q. Yes. A. What do you mean?

Q. If you can go along with me. I'm not very good at describing.

If these are the steps (Indicating) like this in the street --
A. Yes.

Q. -- and as you walk up the steps, is the entrance into the building right there? A. Right to your right.

Q. Right.

And straight ahead of you where the steps end, is there a wall -- A. There's no wall.

Q. -- which furnishes -- which keeps people from falling off the steps? A. A wall?

28 Q. Yes. A. That's a small platform.

As you climb up those about eight steps climbing up -- there are a few bars.

Q. Okay.

Now, when you were handing out the cards to the people, where were you standing?

Were you standing at the foot of the steps? A. Yes, at the ground.

Q. At the ground? A. At the ground.

Q. At the foot of the steps? A. Yes.

Q. At the bottom of these eight steps? A. Yes, outside.

Q. Is that right? A. Yes.

Q. How far away were you from the steps? A. Oh, about two or three feet.

Q. Two or three feet away from the steps? A. Away from the steps, yes.

Q. So, if the steps were coming down the building this way, (Indicating) you were standing about here; is that correct? A. Yes.

29 Q. Okay.

Now, have you been inside this plant? A. Once.

Q. Once? A. Yes.

Q. How high would you say the ceiling is? A. I --

Q. Is it a low ceiling or a high ceiling?

MR. COFFEY: Objection.

What are all these questions for?

JUDGE DAVIS: I don't know.

We'll let counsel go. We'll find out if it's relevant.

MR. KIMMELL: I think it will become relevant in a moment.

JUDGE DAVIS: If it turns out not to be relevant, you can make a motion to strike.

A. It's pretty hard to guess how high.

Q. Is it as high as this? A. A little higher than this.

Q. Let me ask it another way.

Once you enter the building, how many stairs is it up to the --

A. One stair.

30 Q. No, no.

When you climb the stairs inside of the building, how many stairs? Is it a long flight of stairs till you get up? A. No, it's not long.

It's one flight up.

Q. One flight up? A. Yes.

Q. Okay.

Now, on this window that you were talking about -- A. Yes, sir.

Q. -- is that on the side of the building? A. Facing the stair. Not exactly facing the stair, but --

Q. It's facing the street, is it not? A. Facing the street, right.

Q. Right. A. From this window --

JUDGE DAVIS: Is it directly over the stair?

THE WITNESS: No, a little further out from the stair. Not right on top of the stair.

JUDGE DAVIS: How much further?

THE WITNESS: About 15 feet.

JUDGE DAVIS: 15 feet?

THE WITNESS: About 15 feet.

31 Q. (By Mr. Kimmell) Now, Mr. Quinones, isn't it a fact that that window is situated in the middle of the building?

Isn't that window right in the middle of the building?

JUDGE DAVIS: To the left of the stairs?

THE WITNESS: No.

Q. (By Mr. Kimmell) To the left of the stairs in the middle of the building? A. No.

Q. Are you sure? A. Yes.

MR. KIMMELL: Well, your Honor, we'll bring in a graph of this.

JUDGE DAVIS: All right.

Q. (By Mr. Kimmell) Now, the stairs are all the way at the end of the building, are they not? A. Pardon me?

Q. The stairs are all the way at the end of the building, are they not? A. No.

Q. They're not? A. No.

32 Q. Where are the stairs? A. To the front of the building, in a corner of the building.

Q. At the end of the building, right at the corner? A. Depending on what end you are talking about.

Q. Well, a building, Mr. Quinones, usually has four sides. Right? A. Right.

Q. These stairs were at a corner formed by two sides, were they not? A. They were at the left-hand side of the building if you are facing -- towards the street, at the left-hand side of the building --

Q. At the corner, was it not? A. At the corner, left-hand side.

JUDGE DAVIS: Left-hand side of the --

THE WITNESS: Of the building --

JUDGE DAVIS: If you are facing the building?

THE WITNESS: If you are facing the building it would be --

JUDGE DAVIS: It would be on your right?

THE WITNESS: No.

MR. KIMMELL: Yes.

33 THE WITNESS: If I can make a drawing, I will draw it for you.

JUDGE DAVIS: No, no.

Let me ask you this:

If you are facing the building, if you are looking at the building, is the stairs on the --

THE WITNESS: If you are facing the building, the stair is on the right-hand side.

JUDGE DAVIS: Okay.

Q. (By Mr. Kimmell) At the corner of the building; is that correct? A. At the corner, yes.

Q. And the window is situated --

JUDGE DAVIS: On the left-hand side?

Q. -- on the left -- A. Yes, a little to the left.

Q. All right.

Now, this window, what kind of window was it? A. Well, it was --

Q. Was it a steel casement window like that? A. No. It's a glass window that opens up, you know.

Q. You mean opens out the way these do? A. No. It opens --

JUDGE DAVIS: Like this one?

34 (Indicating.)

THE WITNESS: Yes.

JUDGE DAVIS: How big was it?

Q. (By Mr. Kimmell) In other words, in? A. Yes, something like that.

JUDGE DAVIS: How big was it?

THE WITNESS: Bigger than that.

JUDGE DAVIS: How big?

THE WITNESS: About twice, three times as big as that.

JUDGE DAVIS: Well, let's say it's about, oh, three feet by five feet?

THE WITNESS: About, yes.

JUDGE DAVIS: All right.

Q. (By Mr. Kimmell) Now, in the middle of this window, is there a large air-conditioner that's situated in the window?

A. I believe it's more to the right.

Q. Is it in the window? A. Another window.

Q. In the window that you say that they were looking out of, is there an air-conditioner? A. How can -- how can they look through a window where there's an air-conditioner?

35 Q. Exactly, Mr. Quinones.

JUDGE DAVIS: Answer the question.

Was there an air-conditioner in the window they were looking out of?

THE WITNESS: No.

JUDGE DAVIS: All right, the answer is no.

Q. (By Mr. Kimmell) In other words, there were two windows? A. There are lots of windows on that building. There's a whole row of windows there.

Q. Are all of these windows part of this company? A. Yes.

Q. I see.

So there was no air-conditioner in the window that they were looking out of? A. No.

Q. What part of the plant were they in when they were looking out? A. Second floor.

Q. What part of the plant? Were they in the office?

A. I don't think they were in the office.

Q. Now, when you looked up and saw -- and allegedly saw them looking out, was the window open? A. Yes.

36 Q. Were their heads poked out? A. Yes.

Q. All three of them? A. There were two, then one moved away, then the lady came to the window and looked.

Q. In other words, they had the window open and they were poking their heads out? A. Yes.

Q. And looking at you? A. Yes.

Q. And how long did they stay there looking at you this way?

A. Over a minute.

Q. Over a minute? A. Yes.

Q. Now, the Ceballos family as they came out, did they come out in a group? A. Yes.

Q. And did they come out at 4:30? A. Yes.

Q. And this is the time they were about -- you said about 20 other workers were with them at this time? A. Yes.

Q. And then they went around the corner and signed cards?

A. To the side.

*

*

*

*

*

41 Q. Now, Mr. Quinones, when you came up inside the plant, you and your two associates, when you came up the stairs, did the stairs lead you into the plant proper? A. Yes, it leads us into the plant.

Q. Into the plant? A. Yes.

42 Q. And did the workers see your coming? A. Well, we went into the plant.

Yes, they saw it.

Q. They saw you? A. After we got into the plant, yes, they saw it.

Q. And did you talk to the workers in the plant? A. What day?

Q. The day you came up after you found out that this gentleman Abelardo was dismissed.

You testified you went up to the plant that day? A. Yes, yes, I did.

Q. Did you talk to the workers when you went in? A. No.

Q. Did the workers talk to you?

Did they tell you to get out of here, they didn't want you here?

A. I --

MR. COFFEY: Objection, your Honor.

What's the relevance of that?

JUDGE DAVIS: I'll overrule the objection.

You may answer.

Q. (By Mr. Kimmell) Did the workers talk to you and say they wanted you out of there? A. Yes, some of them.

43 Q. Was there a commotion? A. They did the commotion.

Q. Right.

Did a group of workers leave their machines and come toward the office where you were? A. Some did, yes.

Q. How many? A. About four.

Q. And were they yelling at you to get out of here? A. Yes.

Q. That they didn't want you here? A. Yes.

Q. And is it at that point that Mr. Gelbord said, "Please leave or else I'll call the police because you're causing a commotion"? A. No, he wasn't.

Q. Wasn't he there? A. He was there, but he didn't say that at that moment.

Q. Didn't he tell you to leave because he was upset because the workers were not working and were causing a commotion?

A. This particular four persons, yes.

Q. And did he then tell you to leave or else he'd call the police? A. Yes, he said that.

44 Q. Now, you say he told you that he would never sign -- you say he told you he would close up the business before he would sign up with this union? A. Yes.

Q. Where did he say this? A. In the office.

Q. In the office? A. Yes.

Q. Who was present? Just you three and them? A. Yes.

Q. I see.

Did he explain why?

Did he say anything else? A. No.

Q. Did he say because he couldn't afford a union? A. I don't recall him saying that.

Q. Did he say because I'm a small business, I just barely make out and I can't afford the union's welfare fund and pension funds and all of the other funds? A. He didn't say that.

JUDGE DAVIS: Did he say that?

THE WITNESS: He say he just won't allow the union to come in, that he would rather close the plant.

45 Q. (By Mr. Kimmell) He indicated no reason? A. No reason.

He just didn't like the union, he said, "I don't like the union."

Q. Did you try to reassure him that you were very nice people and that there was no reason to feel this way? A. No.

Q. Now, Mr. Quinones, when you were standing in front of the plant handing out cards, did you notice that on the side of the building that you were facing, that there was a roof, an abutted roof one story up, poking out a number of feet away from the building?

A. All I noticed was that they were looking at us --

Q. I'm not asking you that.

I'm asking you, did you notice a roof? A. A roof?

Q. In other words, a one-story roof that came out of the building below the window line? A. No.

Q. You're sure? A. A roof?

Q. A roof, yes.

Let me put it this way:

Let me draw you a little picture if I may. I know I'm not being clear with you.

46 Here is the building line.

All right? A. Yes.

Q. This is the bottom and this is the street and this is the ceiling. Here are the windows.

All right? A. Yes.

Q. Did you notice a roof coming out this way?

(Indicating.) A. Can I draw it my way?

Q. Sure.

MR. COFFEY: Objection, your Honor.

What does all of this have to do with anything?

JUDGE DAVIS: Well, he wants to know what the facts were, what the situation was? I think -- I'll overrule the objection.

A. This is the corner (Indicating) where the stairs is.

Right?

Q. All right. A. These stairs lead to the second floor.

This is where the window is right here.

(Indicating.)

47 There was no obstruction that kept me from seeing their faces.

Q. Now, you're sure there isn't a partition that comes out of the building below the window line? A. That will obstruct my view from seeing them?

Q. Just answer my question, please, Mr. Quinones.

Don't try to second guess me.

Is there an obstruction coming out from the building line?

A. There's no obstruction.

Q. Below the window line and above where you were?

A. There's no obstruction.

Q. You're sure of that? A. Positive.

Q. If we had a picture to show you, you would still be sure?

A. I'm sure that they were looking out the window, through the window.

Q. But you're sure there's no obstruction between the street and the window? A. No obstruction that will prevent me from seeing the faces.

MR. KIMMELL: No further questions.

JUDGE DAVIS: Do you have any more questions, Mr. Coffey?

MR. COFFEY: I just have a few, your Honor.

48

REDIRECT EXAMINATION

Q. (By Mr. Coffey) Could you see the entire window where --

A. Yes.

Q. -- Imre and Hy and Ella were? A. Yes.

Q. Could they see you easily? A. Sure.

Q. Did they have to strain to see you?

MR. KIMMELL: I'm going to object.

How could he know whether they --

JUDGE DAVIS: I'll sustain the objection as to whether they had to strain.

Q. (By Mr. Coffey) They could see you easily and you could see them easily from where they were? A. Yes.

JUDGE DAVIS: Did you recognize them?

THE WITNESS: Yes.

Q. You stated there was a commotion of workers when you went back to the plant on June the 4th. A. Yes.

Q. Were there any supervisors with these workers at that time? A. Yes.

49 Q. Who? A. The floor lady was in the group.

Q. Ella Herskovitz? A. Yes.

Q. What was she doing? A. She was screaming at me with two or three more particular workers.

Q. Was this before or after the boss said he'd call the police? A. This was before.

Q. Was it long before or a few minutes before? How long before? A. A few minutes.

Q. A few minutes before he said he would call the police? A. Yes.

Q. Had the commotion ceased by the time he said he was going to call the police? A. The commotion did cease, yes.

Q. I see.

Now, did --

MR. COFFEY: No further question, your Honor.

MR. KIMMELL: No further questions.

JUDGE DAVIS: All right, thank you.
That's all.

* * * *

52 MR. COFFEY: General Counsel called Abelardo Ceballos to the stand.

Whereupon,

ABELARDO CEBALLOS

was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

53 **DIRECT EXAMINATION**

Q. (By Mr. Coffey) * * *

* * * *

59 I'll have to put him under oath.

Whereupon,

FRANK MONTE

the Spanish interpreter was sworn by the Administrative Law Judge, and interpreted Spanish to English and English to Spanish as follows:

Q. (By Mr. Coffey) What happened on May 29, 1973?

A. The 29th of May 1973, my sister Marta, Eucaris and Luz Maria, we finished work. We went home.

We were already outside and Messrs. Aldrich and Quinones were giving out cards, union cards, to the people who were leaving.

When I and my sisters took cards, I saw an American lady that came down -- that came down, took a card and went back up into the factory.

After a few minutes, around two or three, Mr. Imre, Hy, and Ella were upstairs at the window, looking at us.

Q. Is Mr. Imre and Mr. Hy in this room? A. Yes, they're in this room.

Q. Are these gentlemen in this room, the gentlemen I'm pointing to? A. Yes.

MR. COFFEY: Let the record show that I'm pointing to respondents Mr. Haas and Mr. Gelbord.

60 JUDGE DAVIS: All right.

A. They are those two.

Q. Where was the window? A. It was right out in front where they were giving out the cards.

Q. Was the window in the factory? A. Yes, in the factory.

Q. Okay.

What happened then? A. Then I told Mr. Quinones, asking him about the union, what benefits did it have, everything like that.

When I looked at the window and the bosses were in the window, I said -- I told him I wouldn't sign the card there but to the side of the factory.

I said that I would sign it to the side of the factory.

That's where we signed and that is all for that day.

Q. Now, when you saw Mr. Hy and Mr. Imre at the window, where was the card that Mr. Quinones gave you? A. Our card?

Q. Yes. A. We had our cards in our hands.

61 Q. Now, when you went to the side of the factory and signed cards for Mr. Quinones, did anything else happen then?

A. No, nothing else.

Q. Did Mr. Quinones give you any further cards at that time?

A. Yes, he gave me some other cards that I gave out. I gave them out the next day in the factory to some of my friends.

Q. What happened then? A. The next day I gave the cards out to my friends. Several signed them and sent them to the union.

That was the 30th.

Q. Did anything else happen on the 30th? A. Yes.

Q. What else happened? A. Being that it was lunch time, I saw Ella with a group of people conversing.

That seemed strange to me because that had never happened before.

MR. KIMMELL: I want to object to what it seemed to him. I want to move to strike that portion.

JUDGE DAVIS: What's the grounds? What's the grounds?

MR. KIMMELL: Well, he's talking about a -- he's talking about a frame of mind. It seems strange.

62 I think --

JUDGE DAVIS: He said he had never seen it before.

MR. KIMMELL: Well, it's the strange part.

JUDGE DAVIS: Well, we'll strike the word "strange."

The point is, he had never seen this before, you see, this had never happened before.

We'll strike the word "strange."

Q. (By Mr. Coffey) Did you hear what the group was being told by anybody? A. No.

Q. Who was talking to the group? A. Ella.

Q. And you didn't hear what she said to the group? A. No.

Q. What happened after Ella finished talking to the group?

A. When Ella stopped talking to the group, immediately she came by the same where all of us were eating, and said, "Not for only one

person but for everybody. If somebody fills out and signs the union card, no more work. They will be fired."

MR. COFFEY: Ask him to say what she said in English.

63 Q. (By Mr. Coffey) What did they say in English? Say it in English. A. When we take lunch time 12:00 o'clock --

JUDGE DAVIS: The question is, what did she say?

THE WITNESS: Right.

A. She talked to everybody. If somebody signed union cards, no more work, fired.

Q. (By Mr. Coffey) And did you understand what she said?

A. Yes, I understand.

Q. Okay.

What happened on May 31st? A. May 31st I was working.

At 2:00 in the afternoon, Ella told me, 'Don't forget, go to the office at 4:30 because Hy needs to speak to you.'

Q. What happened at 4:30? A. I saw my sisters in the office, as well.

Hy was there waiting for us.

I was understanding a little English and I spoke with him. He told me that he had no more work because it was too slow, that he couldn't have us there anymore.

I told him that that wasn't possible like that because the day before he had taken on a man to do my same job and he had also taken on more people that week.

64 I told him that I knew the reason for which he was firing us. He asked me why.

I told him because my family and I had signed union cards. He told me he didn't understand.

I, in my English told him, "I know that it's because we signed union cards."

He told me that he didn't understand what union meant.

Then I repeated it to him twice more.

He said that he didn't understand.

Then he took a paper and pencil, and I wrote down, printed the word union in English.

He immediately looked and said that it was not for that, that it wasn't for that, that it was because there was no work.

Then I was going to try to tell him more. Then he told me good-bye, good-bye.

I asked him, "When should we come back for our checks and when should I and my sisters come back for our vacation checks?"

He told us that he wasn't going to pay us, he didn't pay us vacation.

65 Then he told us to come back on Monday for the last few days of work.

I called Mr. Quinones the same day, and then he told me that he was going to try to help me.

Monday morning we went with Mr. Aldrich and Mr. Norman Lewis, logically Luz Maria and Marta and myself.

Q. Was Mr. Quinones also along? A. Yes.

Q. Where did you go? A. When we were in the office --

Q. Whose office? A. Mr. Hy and Mr. Imre.

Q. Is that in the plant? A. Yes.

-- Mr. Norman gave a business card to Mr. Hy. Mr. Hy ripped it and threw it out.

When he ripped it, he picked up the phone and told us that if we didn't leave there, the police were going to throw us out.

Q. Now, did he have a conversation with anybody else at that time?

And if he did, I would like you to tell us --

JUDGE DAVIS: Who?

MR. COFFEY: Abelardo.

Q. (By Mr. Coffey) Did you have any conversation with 66 anybody else while you were in the plant on that day? And could you tell us that conversation in English? A. Yes.

When I was in the office, Mr. Imre called me out to the outer office, you know. He told me, "Abelardo, why have you done this thing with the union?"

MR. KIMMELL: I'm sorry, your Honor, I didn't understand it.

JUDGE DAVIS: You better speak in Spanish and let him translate.

A. "Abelardo, why did you do this with the union? You know I was going to give you a better position here."

JUDGE DAVIS: We'll let that stand. That's clear enough.

Q. (By Mr. Coffey) Did he say anything else besides that?

A. Yes.

Q. What? A. That you put yourself in the union favor.

JUDGE DAVIS: Let the record show that this was said by the witness in English and that I'm letting it stand because it's clear enough.

MR. COFFEY: Okay.

Q. (By Mr. Coffey) Was there any -- is that all that happened 67 on that day? A. Yes, we received our checks and went home. That was my last contact with the factory.

MR. COFFEY: No further questions of this witness.

JUDGE DAVIS: Do you have a statement for this witness that Mr. Kimmell could see?

MR. COFFEY: Sure.

JUDGE DAVIS: Let's take a ten-minute recess at this time.

You can leave the stand but don't talk to anybody about this case.

(Whereupon, a ten-minute recess was taken at 1:50 p. m.)

JUDGE DAVIS: The hearing will be in order.

You may cross-examine, Mr. Kimmell.

MR. KIMMELL: Thank you.

CROSS EXAMINATION

Q. (By Mr. Kimmell) Now, this American lady who you saw taking a card, what is her name? A. I don't know.

Q. How long had she been working there? A. During the time that I've worked there.

Q. So she came to work before you? A. Yes.

68

Q. What kind of work did she do? A. Working on the machines, sewing.

Q. Now, when you gave the cards out in the factory to your friends, did Ella see you do that? A. I don't know if she saw me.

Q. You don't know or is it a fact she didn't see you?

A. I don't know if it's a fact or if it isn't a fact, I don't know.

Q. Do you recall telling the Labor Board in a statement, as follows:

"Hy and Ella did not see me giving out cards in the factory."

Do you recall giving that statement? A. Yes.

Q. Now, is that statement correct? A. Yes, I know it.

Q. Now, when you came out of the factory on May 29th and saw the union delegates there, you say your family was with you? A. Yes.

Q. Were the rest of the employees with you, too?

A. Some.

Q. About how many? A. Around 14 or 15.

69 Q. And did the union delegate hand out a card to everybody?

A. Yes.

Q. Did anybody sign cards right then?

MR. COFFEY: Objection, your Honor.

A. Yes.

JUDGE DAVIS: I'll overrule the objection.

You may answer the question.

MR. KIMMELL: He answered yes.

JUDGE DAVIS: We will let the answer stand.

Q. (By Mr. Kimmell) You did not sign a card then, did you?

A. Yes.

JUDGE DAVIS: Yes, you did not sign a card then?

THE WITNESS: I signed a card.

JUDGE DAVIS: But not right then and there?

THE WITNESS: In that same instant, yes.

Q. (By Mr. Kimmell) Did you not say before that you went around to the side of the factory? A. Not in that time when they were watching us but at the side of the factory, because I told Mr. Quinones --

Q. Excuse me.

I don't want to hear about what you told him.

I'm just asking you when you signed the card and where were you?

70

A. To the side of the factory.

Q. And this was out of sight of the window? A. Yes.

Q. And your family signed cards there, too? A. Yes.

Q. Now, the other workers who signed cards, did they sign -- did they sign on the sidewalk? A. No; to a side with me.

Q. Now, what time is lunch in the factory? A. 12:00 on the dot.

Q. Now, the day that Ella came by and made certain statements about the union, how many workers were sitting there with you having lunch? A. My sisters, one or two others, and myself.

Q. Are these all Spanish-speaking people? A. Yes.

Q. Do your sisters understand English? A. A little.

Q. After Ella said this to you, did you translate what Ella said to your sisters, in Spanish? A. Yes, because I understand English.

Q. And they didn't understand English? A. I don't know if they understood it, but I always interpret for them.

71

Q. Now, what exactly did Ella say again? A. Do you want me to say it in English or Spanish?

Q. Say it in Spanish. A. If somebody fills out and signs the union card, no more work, they will be fired.

Q. Now, this was what day did Ella say this to you? A. The 30th of May.

Q. Now, you say how many other persons outside of yourself and your sisters were there? A. Around two or three.

Q. Now, did these two or three sign union cards? A. I don't know.

Q. Did they ever sign union cards? Do you know? A. I don't know.

Q. But you and your sisters had already signed union cards the day previous? A. Yes.

Q. Mr. Ceballos, you are not a native-born American, are you? A. No.

Q. What country were you born in? A. I'm Colombian.

Q. Were your sisters born in Colombia, too? A. Yes.

Q. Are you in possession of a green alien registration card?

72 MR. COFFEY: Objection, your Honor.

This has no relevance here.

MR. KIMMELL: I think it may be.

JUDGE DAVIS: I'll sustain the objection.

Unless you say that's the reason for his discharge.

MR. KIMMELL: It is not the reason for his discharge, but it certainly is a factor in this case which we will try to show.

JUDGE DAVIS: Then I'll sustain the objection.

You show me how it's a factor, on what grounds.

How is it relevant, counselor?

MR. KIMMELL: Okay.

I think that's all the questions we have.

JUDGE DAVIS: Pardon?

MR. KIMMELL: That's all the questions we have.

Oh, yes, excuse me.

Q. (By Mr. Kimmell) Now, you've been working there about six months? A. Yes.

Q. On top of the staircase, is there a little roof? A. Yes.

Q. And is this roof between the window and the staircase?

A. Yes.

MR. KIMMELL: No further questions.

73 JUDGE DAVIS: Mr. Coffey?

MR. COFFEY: I have a few more questions.

REDIRECT EXAMINATION

Q. (By Mr. Coffey) Abelardo, when you saw the bosses looking at you from the window and they saw you, did anything obstruct your view of them or their view of you? A. No.

Q. Could they see Mr. Quinones?

MR. KIMMELL: I'm going to object to what they could see. He can't know what they can see.

Q. (By Mr. Coffey) Was Mr. Quinones standing near you? A. Yes, to our side.

Q. About how far away? One foot? Two feet? A. Very close because we were receiving cards.

Q. Who was in the group when -- who was talking to Mr. Quinones when the people came to the window? A. When who got near the window?

Q. When the bosses came near the window. A. Who were we in the group downstairs?

Q. Right. A. My sisters, two girls and myself.

Q. Okay.

MR. COFFEY: No further questions, your Honor.

74

JUDGE DAVIS: Let me ask you a question.

Could you see your bosses clearly from where you were standing?

THE WITNESS: Yes.

JUDGE DAVIS: Did you recognize them?

THE WITNESS: Yes.

JUDGE DAVIS: How long were they in the window?

THE WITNESS: I didn't notice exactly how much time because we left and they stayed at the window looking.

JUDGE DAVIS: All right.

RECROSS EXAMINATION

Q. (By Mr. Kimmell) Were they leaning out the window?

A. Yes, were a little bit leaning out.

Q. Is there an air-conditioner in that window? A. No. There's a heating machine.

Q. A heating machine in the window? A. Yes, in the window.

Q. And does it stick out of the window? A. Very little.

Q. How big is it? A. Like this.
(Indicating.)

JUDGE DAVIS: About --

75 MR. KIMMELL: Three feet.

JUDGE DAVIS: No.

It's about a foot and a half to two feet.

Let me see. About two and a half feet.

Q. (By Mr. Kimmell) About two and a half feet wide?
A. Exactly like this, more or less.

(Indicating.)

Q. So the machine is about that wide?

(Indicating.)

JUDGE DAVIS: About two feet and a half.

A. Yes.

Q. And how high is the machine? A. This height, more or less.

(Indicating.)

Q. The height of this stand in front of you? A. From here to the floor.

(Indicating.)

Q. Three feet, three and a half feet?

JUDGE DAVIS: Yes, three to three and a half feet.

How big is the window?

THE WITNESS: It's very big.

JUDGE DAVIS: How big?

THE WITNESS: It's almost the entire wall

76 I am talking about the part that corresponds to the office.

JUDGE DAVIS: I'm talking about the part where they were looking out.

MR. KIMMELL: May I please?

Q. (By Mr. Kimmell) In other words, you're talking about the window in the office, are you not? A. Yes.

Q. And the window they were looking out of was the office window? A. Yes, I didn't notice very well because there are two, but I think that it was the one from the office.

Q. So it was the office window and you say there's a heating machine in the window? A. Yes, I know that office very well.

Q. What was your answer? A. I know that office very well.

Q. Now, how far out would you say this heating, or air-conditioning, machine sticks out in the machine? A. Very little.

Q. By "very little," do you mean less than six inches, an inch, a foot, or what? A. Half of this.

(Indicating.)

JUDGE DAVIS: About six inches.

77 MR. KIMMELL: Yes, your Honor.

Q. (By Mr. Kimmell) And you're sure this is a heating machine? A. Yes.

Q. And you're sure it only sticks out six inches? A. Yes.

Q. What kind of windows are in this office? A. If you give me a paper and pen --

Q. Well, is it similar to this type of window that opens up inside?

(Indicating.) A. Yes.

Q. Is it similar to this?

(Indicating.) A. Yes.

The only thing is it opens for out. It opens out.

Q. It opens out? A. It's long.

JUDGE DAVIS: How long?

Could you point out how long it is?

THE WITNESS: More or less like this one?

(Indicating.)

JUDGE DAVIS: Well, point out from where to where.

THE WITNESS: From here.

(Indicating.)

78 JUDGE DAVIS: Oh, he's pointing out about ten or eight feet.

MR. KIMMELL: I would say eight feet, your Honor.

JUDGE DAVIS: How high is it?

THE WITNESS: Up to here, I think.

JUDGE DAVIS: From the floor?

THE WITNESS: No.

JUDGE DAVIS: How high?

THE WITNESS: Well, from the floor upwards up to around here.

(Indicating.)

JUDGE DAVIS: About four feet.

THE WITNESS: Me, short as I am, can look outside.

Q. (By Mr. Kimmell) Now, the part that opens up, is that at the bottom of the window? A. Yes, it opens out.

Q. Now, you say the window is about this high, (Indicating) about three feet high? Is that what you're saying?

JUDGE DAVIS: About four feet high, he said.

MR. KIMMELL: I'm sorry, four feet.

79

Q. The window is about four feet high? A. When I look out in the street it's almost up to my neck.

Q. About four feet.

Does the whole four feet open up? A. Yes.

Q. And does it open up in one piece from one end to the other?

A. No; by pieces, more or less three pieces.

Q. In the middle, isn't the heating machine? A. Yes.

MR. COFFEY: Are you finished, counselor?

MR. KIMMELL: One second.

Q. (By Mr. Kimmell) Now, just one last question, if I may.

When Ella came by and spoke to you and your sisters and the two other girls, did she say this thing about signing the union card to you? A. No.

Q. To who? A. To everybody.

Q. To the whole group? A. Yes.

Q. And did she stay there while you translated it to your sisters? A. No.

She kept right on going. She said it in passing.

* * * * *

87

MR. COFFEY: General Counsel calls Marta Ceballos.

Whereupon,

MARTA CEBALLOS

was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:
(Through the interpreter.)

DIRECT EXAMINATION

88 Q. (By Mr. Coffey) What is your full name? A. Marta
Guerrera.

JUDGE DAVIS: Let the record show that she is testifying through an interpreter.

Q. What's your home address? A. 111-49, 44th Avenue,
Corona, Queens.

Q. How long had you been employed by Lizzdale? A. Three
years.

Q. And what did you do for Lizzdale? A. Extending the
material for it to be cut by the cutter.

MR. KIMMELL: I'm sorry, I didn't get that answer.

THE WITNESS: Extending the material for it to be cut by the
cutter.

MR. KIMMELL: Extending?

THE INTERPRETER: Stretching it.

MR. KIMMELL: I see.

Thank you.

Q. (By Mr. Coffey) And how much did you earn a week?
A. 80.

Q. For how long a week? A. 40 hours.

Q. And who was your supervisor? A. Ella.

Q. Would you tell me what happened on May 29, 1973?

89 A. May 29th, when we left the factory, my sister, Eucaris,

Abelardo, Luz Maria, and myself, we saw the union delegates, Quinones and the other delegate.

MR. COFFEY: Would the record reflect --

JUDGE DAVIS: You mean Mr. Aldrich?

THE WITNESS: Yes.

A. (Continuing.) They gave us union cards.

My sisters and brother also received them. When we were speaking with them, with the delegates, an American lady came down, took a card from one of the delegates, went back upstairs.

In a moment we saw Imre, Hy and Ella at the window. We went to a side, signed the cards, the union cards. That's all.

Q. Where was the window that you saw the bosses looking out of? A. In the big office.

JUDGE DAVIS: Was it directly overhead from where you were standing, or to the left or right?

THE WITNESS: Yes, we were off to the side here (Indicating) and the window is like this (Indicating) in the front.

90 JUDGE DAVIS: Well, was it to the left or right of where you were standing?

THE WITNESS: We were on this side (Indicating) here, the window was here (Indicating) in front, and they could see us because I saw that they were seeing us.

MR. KIMMELL: I move to strike that.

JUDGE DAVIS: That isn't the question I asked.

As you were standing there, was the window to your left, or to your right, or overhead?

THE WITNESS: Above.

JUDGE DAVIS: Overhead, directly above?

THE WITNESS: Yes, of course.

JUDGE DAVIS: All right.

Q. (By Mr. Coffey) Now, when you were on the side of the building, did Mr. Quinones give anything else to Abelardo?

A. Yes, Quinones gave him some cards to give out in the factory.

Q. What happened on May 30th? A. On May 30th, we were having lunch. Ella came by and said --

* * * *

95 JUDGE DAVIS: * * * What did Abelardo say to you?

THE WITNESS: Abelardo said that Hy had said to him that there was no more work because the work was very slow.

Abelardo told him that that was impossible because they had just received new people.

96 The day that we were there, be it Monday -- let's say it's Monday, there were new people there, he told him.

JUDGE DAVIS: Is that what Abelardo told you?

THE WITNESS: No.

What he told us was that Hy had told him that there was no more work, there was no more work because it was very slow.

JUDGE DAVIS: Well, how did you learn about the other things, then?

THE WITNESS: Abelardo told us.

JUDGE DAVIS: When?

THE WITNESS: The 31st.

JUDGE DAVIS: At the same time?

THE WITNESS: Yes, that day.

JUDGE DAVIS: Well, here in the office, while you were still in the office?

THE WITNESS: In the office. We were there with Hy.

* * * * *

98 Q. (By Mr. Coffey) What happened next? A. Then Abelardo told Hy that it was impossible, that he knew why Hy was firing us, because he had seen us speaking with the men from the union and he had seen us with the cards, the union cards.

Hy said he didn't understand the stuff about the union.

Abelardo wrote down on a piece of paper "union."

Hy said, "I don't understand."

He said he didn't understand anything.

After Abelardo wrote it, he said, "Now I understand it."

We didn't see each other again till Monday.

Q. And what happened on Monday? A. On Monday we went with the union delegates, Quinones, Aldrich, and the other black man.

Q. Is that Mr. Lewis? A. Yes, Mr. Lewis.

Q. Was that on June the 4th? A. It was the Monday that we went for the checks.

99 Q. Okay.

What happened then? A. We got into the factory. The other black man -- I don't know his name --

JUDGE DAVIS: Mr. Lewis?

THE WITNESS: Yes, Mr. Lewis.

A. -- gave the business card, and Hy ripped it and said that he was going to call the police.

MR. KIMMELL: Now, how can this witness know what Hy said?

JUDGE DAVIS: Well, how do you know what Hy said in that regard?

THE WITNESS: He said, "If you don't get out of here, I call the police."

JUDGE DAVIS: Let the record show that she said this in English.

MR. KIMMELL: Would you read it back, Mr. Reporter, I still don't understand it.

(Whereupon, the record was read.)

Q. (By Mr. Coffey) Hy say that? A. Yes.

Q. Was Abelardo translating from English into Spanish to you at this time? A. No.

100 Q. But you heard that? A. Yes.

Q. Where was Abelardo at this time? A. Abelardo was there with us, but he didn't speak because the union delegates were speaking to him.

Q. Did you see Abelardo have a conversation with Mr. Imre on that day? A. Imre and Abelardo were speaking off to a side in the factory.

Q. Did you hear what was said? A. No.

Q. Okay.

What happened then? A. That was my last contact with the company.

* * * *

101

CROSS EXAMINATION

Q. (By Mr. Kimmell) Is it Miss or Mrs. Guerrera?

A. Mrs.

Q. Mrs. Guerrera, when you took the card from the union delegate, were there other workers with you? A. Yes.

Q. About how many? A. Around two.

Q. And did you sign the card on the side of the building?

A. Yes, I signed it off to the side.

Q. Did other people sign it on the side of the building?

A. Everybody to the side.

Q. So where you couldn't be seen? A. Yes.

Q. Now, while you were talking to the union delegate, what made you look up and see the boss in the window?

Did somebody tell you to look up? A. No.

I just look by myself.

102 Q. You just happened to look up? A. I looked up and I saw them.

Q. And did you tell your brother what was going on up there?

A. I told them, "Look who is up there."

Q. Were you the first one to see the bosses in the window?

A. I wasn't looking around myself, I was looking up there at the window. I don't know.

Q. All right.

Now, what's the name of this American lady? A. The one that came down?

Q. Right, and then went upstairs. A. I don't know.

I don't know her name.

Q. You've been working there three years? A. Yes.

Q. And you don't know her name? A. No.

Q. Will you describe her, please? A. She's short. She's elderly.

Q. What work does she do? A. On a machine.

103 Q. What type of machine? A. I only know that she works a machine. It should be a Merro.

MR. KIMMELL: Your Honor, my questions are only designed to try to find out who this woman is so we can question her.

Does this give you any clue as to who she is?

MR. GELBORD: How did she describe her?

MR. KIMMELL: An elderly woman who works on a Merro machine.

THE INTERPRETER: Short.

Q. (By Mr. Kimmell) Would you describe what color hair?

A. I don't remember.

Q. Does she speak with any type of foreign accent? A. No.

Q. She has no foreign accent? A. No.

Q. You think she's American born? A. I think so.

Q. Is she a white woman or a black woman? A. White.

Q. Who does she eat lunch with, this American lady?

A. With the other operators. I don't have much contact.

MR. KIMMELL: It's very unfortunate.

104 I know it's not the witness' fault, but we're being charged with something and we can't even defend ourselves because we don't know who the person is.

Apparently there is no way of knowing.

JUDGE DAVIS: They don't know either.

MR. KIMMELL: I don't blame the witnesses, by no means, your Honor.

Q. (By Mr. Kimmell) Can you give us any clue as to what the name of this worker may be or who she is so we can talk to her?

JUDGE DAVIS: Ask her if she can locate the -- if she can pinpoint the location of the machine that this lady works at.

THE INTERPRETER: Yes, sir.

THE WITNESS: Our table is in the middle. To the -- side there's all the machines.

JUDGE DAVIS: How many people -- how many women are working on the machines?

THE WITNESS: I don't know.

MR. KIMMELL: Does General Counsel know the name of this lady?

MR. COFFEY: No way.

We don't know. We would have her here to give testimony.

MR. KIMMELL: Okay.

105 Q. (By Mr. Kimmell) Now, this window that the bosses were in, this is the office window, is it not? A. Yes.

Q. Is there an air-conditioning machine in the middle of the window? A. I don't know because I go into that office -- I've gone into that office very few times.

Abelardo would know better than me.

Q. I'm asking you, have you seen an air-conditioning machine in the middle of the window? A. No.

Q. When you looked up, did you see an air-conditioning machine? A. No.

Q. This window was directly above the staircase; is that right? A. No.

It's the big office window, it's not by the staircase.

Q. Is it to the left or to the right?

I think the Judge went through this before with you.

Is it to the left of the stairs or to the right of the stairs?

106 A. Which window?

JUDGE DAVIS: The one where they were looking out.

THE WITNESS: Where they were?

JUDGE DAVIS: Yes.

A. It's on this side.

(Indicating.)

We were there on this side.

(Indicating.)

JUDGE DAVIS: On the left.

MR. KIMMELL: All right.

Q. (By Mr. Kimmell) Facing the building, is it to your left or to your right? A. This is the building.

(Indicating.)

There's a little small window over here.

(Indicating.)

There's a little window over there for the staircase.

(Indicating.)

Over here, to the other side, is the big window to the office.

(Indicating.)

Q. To the left? A. Yes.

* * * *

108 A. No.

Q. You have never seen the air-conditioner, you have never seen the roof? A. No.

MR. COFFEY: She's answered the question, your Honor.

Q. (By Mr. Kimmell) And you don't know where the window is? A. No.

Q. And you don't know who the American lady is? A. No.

Q. Now, did you ever pass out cards in the factory? A. No.

Q. Now, when Ella spoke to you and your family in the plant, you had already signed the card, had you not? A. Yes.

Q. Thank you.

REDIRECT EXAMINATION

Q. (By Mr. Coffey) From where you were standing with
109 the group that had signed the -- scratch that. I withdraw that.

From where you were standing with Mr. Quinones and your
brother and your sisters, could you see the window in the factory
where -- A. Yes.

Q. -- Hy -- could you see Hy and Imre in the window?

A. Yes, and Ella.

JUDGE DAVIS: Did you recognize them?

THE WITNESS: Yes.

JUDGE DAVIS: You could see their faces?

THE WITNESS: Yes.

JUDGE DAVIS: Were they as far -- how far were they? As
far as those people over there?

(Indicating.)

Is that your husband?

MR. COFFEY: That's her brother.

JUDGE DAVIS: Is that your brother there?

THE WITNESS: Yes.

More or less.

JUDGE DAVIS: About the same distance?

THE WITNESS: Yes.

JUDGE DAVIS: That's about 30 to 35 feet, I would say. It
might even be closer to 40 feet.

MR. COFFEY: Those are all of the questions we have, your
Honor.

*

*

*

*

*

116

16 Court Street
Brooklyn, New York
October 24, 1973

* * * *

119

HYMAN GELBORD

* * * *

DIRECT EXAMINATION

Q. (By Mr. Kimmell) What position do you hold in the Respondent company? A. President.

Q. Is Mr. Haas, what office does he hold? A. Treasurer, secretary.

Q. Do you and Mr. Haas own all the stock of the corporation?

120 A. Yes.

Q. How long have you been in business, in this business?

A. Over eight years. Eight, nine years.

Q. About how many employees do you regularly have on your staff? A. Between sixty and seventy.

Q. Sixty to seventy? A. At the moment.

Q. It varies, I take it? A. It varies.

Q. Back in May, was that about the number of employees you had? A. More likely.

Q. Right.

Has there ever been a union representing your employees?

A. Beg your pardon?

Q. During the time, the eight years you've been in business, has there ever been a union which represented your employees?

A. Yes.

Q. When was that? A. I would say about --

Q. Mr. Gelbord, when I say represent, did you ever have a contract with a union for your employees? A. No.

MR. COFFEY: Objection.

121 What has this got to do with anything?

JUDGE DAVIS: The question has been asked and answered.

MR. KIMMELL: I think you should know it as background.

JUDGE DAVIS: Okay.

Q. (By Mr. Kimmell) Mr. Gelbord, there's been testimony by the Government in this case, which you have heard, since you were here yesterday, concerning certain windows and the physical structure of your plant. A. Yes.

Q. Will you please describe your plant, both inside and out, in general terms? A. Let's start from the outside.

Q. Okay. A. This is a corner building. There is, as you approach the building, there is, I would say, that size stairs going upwards. I would say seven, eight stairs.

Q. Is this a narrow staircase? A. Narrow, I would say that size.

JUDGE DAVIS: About three feet wide?

THE WITNESS: Right.

Q. This staircase, is this on the outside of the building?

A. Outside of the building, yes.

Q. Now, as the stairs go up, is there any railing on the 122 street side of the stairs? A. There is a rail on this side and on this side.

JUDGE DAVIS: On the left hand side?

THE WITNESS: As you go up, on the lefthand side, yes.

And in front, later on, where there is to go to the door, in. The door is right to your right as you go up the stairs.

Q. At the head of the stairs, where you have to turn right to get in the building, is this a solid wall? A. What do you mean a solid wall?

MR. COFFEY: Objection, Your Honor.

Counsel is leading the witness.

JUDGE DAVIS: I think he can lead him in this description

Q. As you go up the stairs, then you turn right into the building? A. Yes.

Q. At the point where you turn right, is there a solid wall behind the stairs? A. Yes. Where the door is, solid wall, yes.

Q. Right.

This wall goes down to the street? A. Correct.

123 Q. On top of the stairs, is there anything on top of the stairs?

A. A roof.

Q. How high is that roof?

JUDGE DAVIS: On the top of what stairs?

THE WITNESS: Of the stairs to go into the building. The outside stairs.

JUDGE DAVIS: Not the outside stairs?

THE WITNESS: The outside stairs.

Q. In other words, on the outside of the building there's a roof? A. Correct.

Q. On top of the stairs? A. On top of the stair, correct.

Q. As far as you know, was this roof built to protect people from rain as they walk up the stairs? A. It looks like it.

Q. How high up on the building is this roof? A. Oh, I would say -- ten foot, twelve foot, something like that.

JUDGE DAVIS: Just a minute, please. I want to get this straight in my own mind.

You say there is an outside staircase before you get into the building, and then there's a stair into the building?

124 THE WITNESS: Behind the door. The door is on the structure wall.

Once you enter, you pass by this n comes the hall-way, and the stairs is up.

JUDGE DAVIS: But I'm talking, there's a stair outside the building?

THE WITNESS: Yes.

JUDGE DAVIS: And this roof covers that stair?

THE WITNESS: Correct. The roof is outside of the building.

JUDGE DAVIS: That's all I want to know.

MR. KIMMELL: Would the reporter please mark this as Company Exhibit 1?

(Respondent's Exhibit 1 was marked for identification, as of this date.)

MR. KIMMELL: Mr. Coffey, do you want to look at it?

MR. COFFEY: What is it?

MR. KIMMELL: It's a diagram we made of the building.

THE WITNESS: That is the outside wall.

MR. KIMMELL: Just a minute.

MR. COFFEY: We object to this, Your Honor, as not the best evidence.

MR. KIMMELL: I haven't offered it yet.

I just want the witness to testify from it.

125 JUDGE DAVIS: All right.

Q. I show you, Mr. Gelbord, this document and ask you what it is?

Did you prepare that? A. Yes.

Q. What is it?

What does it show? A. This shows the outside wall of the building, 83rd Street. This is the staircases outside of the building. Here is a wall, and here is a wall, that high. Above it, here is the roof.

Q. Here is the roof that you were talking about? A. Correct.

This is not in the building, this is outside of the building.

Q. Right. A. If you look this way, then that would be --

JUDGE DAVIS: You know, I can't understand, and the record is not clear, when he says this and that.

MR. KIMMELL: We'll try to --

JUDGE DAVIS: You may know, but the record won't show it.

MR. KIMMELL: I quite agree.

126

JUDGE DAVIS: So, if you are going to use this at all, you'll have to mark it by A, B, C, or 1, 2, 3, or something like that.

MR. KIMMELL: Very good suggestion.

Q. Mr. Gelford, would you mark with 1, with the numeral 1, where the stairs are?

JUDGE DAVIS: That's the outside stairs?

Q. Outside stairs. A. One.

Q. Right.

And a person who is coming -- who wants to come into the building, would you mark with 2 where that person enters onto those stairs?

A. Okay.

Q. And would you mark with 3, where the door is into the building proper? A. I'll make a diagram right from the door.

Right here is the door.

Q. Mark that as 3? A. Three.

I'll put door.

Q. Will you mark as 4 where this little roof is? A. Okay.

Q. Is this roof above the door, or is it below the door?

A. Above the door.

Q. Pardon? A. Above the door.

127 Q. Is it immediately above the door? A. I would say yes.

Q. Yes.

Now, this building shows two stories? A. Yes.

Q. The first story, do you have anything to do with that?

A. No.

Q. Is that another company? A. Another company.

Q. Okay.

You occupy the second story, is that correct? A. Correct.

Q. Would you mark with a 5 which is the window from your office? A. My private office?

Q. Your private office.

Mark it right over here. A. Okay.

Q. Would you mark as number 6, the window which is the main office? A. Yes.

Q. There's another window here, to the right of the diagram.

What is that? A. That is from the hallway.

128 Q. I see.

Window number 5, which is your private office, there's been testimony that you were observed there.

Would you describe that window, window number 5? A. Window number 5 has an air conditioner inside, it sticks outside, and the bigger part of the air conditioner is in the office, not outside of the office.

Q. How far does it stick out? A. I would say something like that.

Q. A foot and a half?

JUDGE DAVIS: About a foot.

THE WITNESS: No, it's more than a foot.

I would say about two foot, isn't it?

JUDGE DAVIS: Fifteen inches.

Q. Okay.

How big is this air conditioner? A. It's a big unit.

Q. Well, that doesn't mean much to say it's big.

How big, in feet? A. In feet?

I don't know, the Feders Air Conditioner, what is it, about two and a half foot by three foot, or something like that. I never measured it, so I don't know.

129

Q. What part of the window does this air conditioner take up? A. The middle of the window.

Q. Are there parts of the window that can be opened, where the air conditioner is? A. Not in this office.

Q. In other words, this is a stationary window? A. Yes, it can. Above the air conditioner it can be opened, yes.

Q. Could you, standing on the floor, reach above the air conditioner and look out that window? A. No.

Q. Is it taller than you are? A. I would say the same height with me.

Q. In other words, the bottom of the window is the same height as the top of your head? A. I would say so.

JUDGE DAVIS: You could stand on a chair and look out, couldn't you?

THE WITNESS: If I have a chair, yes. If it is open.

JUDGE DAVIS: Yes.

Q. Let's talk about window number 6. A. Yes.

Q. Which is in the general office.

Is there any kind of heating device or -- A. Yes.

130 Q. Or air conditioning device in there? A. Yes, below the window.

Q. Below the window there is what? A. A heating device.

A radiator.

Q. What part of window number 6 can be opened? A. Also the same thing as number 5.

Q. Would you say again what part of the window can be opened?

A. The same style of windows, in the same place they're being opened up. It is not a standard room window. It is a commercial window.

It's something, middle of the -- the upper part.

Q. By standing on the floor, can you look out through the part of the window that you can open? A. By standing on the floor?

Q. Yes. By standing up. A. Standing on the floor?

Q. On the floor. A. No.

Q. Is it taller than you are? A. I wouldn't say taller from me, but it's most inconvenient to. I would say it's most inconvenient. No. You have to use a chair.

Q. So that if you wanted to poke your head out, you would have 131 to use a chair? A. Right.

Q. And you would be way at the top of the window, is that correct? A. Correct.

Q. Have you ever looked out these windows? A. If I ever looked up?

Q. Looked out of these windows, at any time? A. Yes.

Q. When you look out the windows, will you tell us, looking out, first out of window number 5, by looking out, what can you see of the street and so forth, in front of you? A. Across the street to the sidewalk, the buildings across.

Q. Across the street? A. Across the street.

Q. Can you see this point at the bottom of the wall where your building meets the street?

JUDGE DAVIS: Mark the point, mark it 7.

Q. Can you see point 7, looking out of window number 5? A. No.

Q. Which is the point where the building wall meets the street? A. No.

Q. Impossible? A. Impossible, even if I opened the window, and I stand on a chair.

132 Q. Why is that?

Is that because of the height of the building? A. I cannot stick out. The air conditioner is right behind me. I can't lean over that much over the air conditioner.

Q. You couldn't lean out far enough, unless you climbed on top of the air conditioner? A. Right.

Q. Can you, from window number 5, in any way, see the staircase? A. No.

Q. Why is that? A. For two reasons.

Reason number one, the roof is obstructing the view.

Reason number two, the wall here doesn't let me have a clear view, also.

Q. How high is window number 5? A. How high from where?

Q. From the street. A. From the street?

Q. Yes. A. I would say it's -- I would say the starting of the window, I would estimate must be about thirty feet. I would say twenty-four, twenty-five feet.

Q. Is this an old building? * * *

* * * *

134 Q. Let's go to window 6.

Have you ever looked out of window number 6? A. Yes.

Q. Tell us what you can see by looking out of the window.

A. Again, the same thing as window number 5.

I can see quite clearly across the street.

Q. In other words, the point on the opposite side of the street where your building is? A. Correct.

Q. From window number 6, can you see the staircase?

A. No.

Q. Will you tell us why? A. For the same reason.

Not as much as the roof, but the wall. I cannot look to the wall.

Q. If you open -- A. Because I'm inside in the room.

Q. If you open window number 6, is there any way other than standing on a chair, and sort of suspending yourself out, that you can --

A. Other than standing on a chair, you cannot see.

Q. It's impossible? A. It's impossible.

135 Q. And if you stood on a chair, what would you have to do in order to see -- Could you see the staircase even if you stood on

a chair? A. If I stood on a chair, the only difference from this window to this window, is here is no air conditioner, but I have to lean out quite a lot to see, and then comes the roof obstructing the view.

JUDGE DAVIS: Does the roof obstruct the view of the stair?

THE WITNESS: Yes.

Q. Is the roof in effect right immediately on top of the stairs? A. Yes.

Q. Is it the same width as the stairs? A. I would say yes.

Q. When you moved in this building, do you know why this roof was put there, what the purpose of the roof is? A. I wasn't there. I don't know. It was there already.

Q. Does it shield people on the stairs from the rain?
A. Yes.

MR. KIMMELL: I offer Employer Exhibit 1 in evidence.

MR. COFFEY: We object, Your Honor, because that's not the best evidence of what windows. It's just lines on a piece of paper, as far as we're concerned.

We're supposed to have a view at the end of the hearing.

136 JUDGE DAVIS: You can submit contrary testimony, and I still say we'll -- if you gentlemen will arrange it, I will take a view. But I'm going to admit this in evidence.

This will be marked as Respondent's Exhibit No. 1.

(Whereupon, the above referred to was received and marked Respondent's Exhibit 1 in evidence.)

Q. (By Mr. Kimmell) Mr. Gelbord, on May 29th, it's been testified here, you were observed watching union activity outside of your plant. I think you have heard that testimony.

Number one, Mr. Gelbord, I remind you that you're under oath.

Were you in that window looking out, at about 4:30? A. No.

Q. Was your partner, Mr. Haas? A. No.

Q. Was your forelady, Ella? A. No.

Q. If you were in the window and looking out, whichever window it is, since there's been testimony it was either the office or the main office window, could you have seen anything? A. No.

Q. There's been testimony here about a, quote, an American lady. A. Yes.

Q. There's been testimony that this person is a native born

* * *

* * * *

138 by their answer.

Q. (By Mr. Kimmell) From the description that you have heard from the witnesses, is there anybody that you employ, who fits that description? A. Not to my knowledge.

Q. On that day -- A. All I heard, the American lady.

Q. There was some attempt to describe her as short and elderly. Okay.

Now, on that day, did any, quote -- A. With all due honesty to that question, this is a broad subject.

JUDGE DAVIS: It's insufficient description for you to make a judgment, that's all.

Q. On that day, on May 29th, at around 4:30, did any employee of yours come back into the plant and tell you that the union was passing out cards? A. No.

JUDGE DAVIS: We can't hear a shake of the head.

THE WITNESS: I said no, not to me, anyway.

JUDGE DAVIS: All right. We need answers.

Q. Neither an American lady or a Spanish lady or any other lady? A. No.

Q. Now, Mr. Gelbord, on the 29th -- on the 29th of May, did

* * *

* * * *

139 Q. As a matter of fact, Mr. Gelbord, when is the first time that you know that a union was even interested in your plant? A. I think it was either on a Wednesday or on a Thursday morning, in that particular week, yes.

Q. Was that before or after May 29th? A. After May 29th.

Q. You'd say -- May 29th, I believe was on a Friday, is that correct?

MR. COFFEY: No.

MR. KIMMELL: Let me get the calendar out and see. May 29th was a Tuesday.

Q. Now, when is the first time you knew anything about a union at your plant? A. I don't recall exactly. It was either on Wednesday or on Thursday.

Q. In other words, either the 30th or the 31st? A. Correct.

Q. How did you find out about a union? What happened?

A. I found on my desk union authorization cards.

Q. These were the cards --

What did these cards say?

MR. COFFEY: Would you repeat that answer?

140 MR. KIMMELL: He found on his desk union authorization cards.

JUDGE DAVIS: Cards, you say?

THE WITNESS: Yes.

JUDGE DAVIS: One card or how many cards?

THE WITNESS: Two or three or something. More than one.

Q. Are these white cards? A. White cards.

Q. Do you -- A. Like postcards. The size of postcards.

Q. Do you remember what it said, generally? A. The card says authorization of my own free will, or something.

Q. It has something to do with the union? A. Yes.

Q. Who put them on your desk, do you know? A. The forelady.

Q. When she put them on your desk, did she tell you where she had received them? A. Yes.

When I found this, I asked her what is that doing on my desk. She said a couple of girls came up and gave it to her.

Q. She gave it to you? A. And she put it on my desk.

141 JUDGE DAVIS: The forelady, you mean this woman referred to as Ella Herskovitz?

THE WITNESS: Yes.

Q. Were these cards signed? A. No.

Q. Or unsigned? A. Blank.

Q. Just blank cards? A. Blank.

* * * * *

143 Q. The stairs leading up, does that open up into the plant?

* * * * *

144 in the plant? A. I suddenly heard a big commotion outside of the office. I went out from the office, and I saw a big commotion, with the people screaming.

Q. Are these the workers? A. The workers.

Q. About how many workers? A. In all the excitement, I would say twelve, fifteen, something like that.

Q. Was Mrs. Herskovitz among these workers? A. No.

Q. Was she even at work that day? A. No, she was at work, but she wasn't in the place.

Q. She was in another part of the plant? A. No. She went down. She wasn't in the place. She had some, to take care on her

car repair, and she went down. She told me she's down for car repair, before they came up even.

Q. She was at work, but she wasn't on the premises when this happened? A. Correct.

Q. She was outside? A. Outside.

Q. So this group of twelve or fifteen workers, what was 145 going on? A. They started to holler at them, sounded to me --

Q. Holler at who? A. At the union agents.

Q. What were they saying? A. I couldn't make out. Just a big noise. Came something, get out, get the hell out, leave us alone, something like that.

Q. These were the workers talking to the union, screaming at the union delegates? A. Yes.

Q. What did the union delegates do? A. It was a big commotion. I couldn't make out what they -- I was busy with them in the office arguing, and suddenly I saw my partner over there, too, among them, but he was trying to calm them down, ~~and~~ send them back to work. It looked to me like the thing is out of hand.

Q. What did you then do? A. I said either you go out or I'm calling the police.

Q. You said this to the union delegates? A. Correct.

Q. Now, why were you -- Why did you tell them that you were going to call the police? A. I asked them to leave and they refused.

Q. Was this because of what they were telling you, or because of the worker commotion that you were calling the police? A. I 146 was calling the police because of the commotion that was in the place, the work was interrupted.

Q. Did you have to call the police? A. I did.

Q. What? A. Yes, I did.

Q. Did the police come? A. Yes, they did.

Q. Were the delegates still there? A. No.

Q. They left in the interim? A. They left before.

Q. Things then calmed down? A. Yes. They left and things quieted down, and back to normal.

Q. Have you ever seen these gentlemen again? A. Yes.

Q. Under what circumstances? A. Downstairs, outside the place.

Q. What are they doing there? A. Organizing the place.

Q. Do they pass out cards? A. Yes.

Q. Do you interfere with their organizing outside? A. No.

* * * *

147 Q. Now, let us talk about these four workers that you dismissed.

First of all, it's been testified to here that they are related, they're all in the same family.

Do you know that to be a fact? A. Yes. I don't know exactly how, but I know.

148 Q. In other words, you didn't know exactly what the relationship was -- A. It's a brother and sister, sister and law, something. But I know it's a relation.

* * * *

150 JUDGE DAVIS: Do you make finished garments there?

THE WITNESS: Yes.

JUDGE DAVIS: What sort of garments?

THE WITNESS: Sweaters.

JUDGE DAVIS: Sweaters?

THE WITNESS: Yes.

* * * *

156 (By Mr. Kimmell) When did you discover this? A. I would say sometime late in March or the beginning of April.

Q. Okay.

What steps did you take to discover what was causing -- Was this a recurring shortage? Did it keep happening? A. The very first time I believe it was in the end of March, I believe, sometimes, when it was missing, goods that we cut -- goods, and we got rather disturbed about it, and we start to look in and we find out that we are missing.

Q. In other words, you tried to find it and you couldn't?

A. I could not. No.

Q. What did you do then? A. As far as the knitting order is concerned, the cutting order is concerned, the knitting order and the cutting order did correspond in the amount, but the shipping did not correspond.

Q. In other words, you were directing the knitting and the cutting, in accordance with the order, but fewer items were being shipped out? A. Correct.

Q. You then tried to find out where the discrepancy was?

A. And I couldn't find it.

Q. Okay.

157 What did you do then? A. With Mr. Haas I spoke. I asked Mr. Forelady what. Nobody could account for it.

Q. Okay.

Then what happened? A. Later on back in April again, again the same thing.

That was on orders not repeating orders. Where if it would be interlocking it would be almost impossible for me to see it.

Q. In other words, you discovered these discrepancies on individual orders, not on the open book orders? A. Correct.

Q. Do you discover again in April a discrepancy? A. Yes.

Q. Was it about the same type of discrepancy, the same size?

A. I don't remember exactly.

Q. But it was enough to -- A. To be alarmed.

Q. To be alarmed? A. Yes.

Q. What did you do? A. Again we sat down and we tried to figure out where is it, what is it. It has to be, it cannot disappear just like that

There's only one explanation for it, a sweater does not * * *

* * * *

159 A. It was sometime in the middle of May.

Q. Around the 15th? A. I would say middle of May, yes. Around that time.

Q. What happened? A. When the forelady came to me and told me a certain thing what did happen.

Q. What did she tell you? A. She said I started to watch the people when they're going home, whether they're taking out anything, with their bags in here. I was then in last night, and trying to ask them to open up the bags.

Q. By bags, do you mean, what kind of bags? A. Whatever they're carrying, a handbag, a bag like that. Like they go out from work.

Q. In other words, do the ladies who work for you normally come in with shopping bags or things of this sort? A. Sometimes

no. Sometimes they bring in, I don't know what. But they're going out with a handbag, sometimes a paper bag or a shopping bag sometimes. Yes, they do.

Q. You say the forelady told you she has been watching the workers as they leave? A. She told me yesterday I did, and I -- at the moment she told me the story, at the moment I didn't make nothing out of it.

160 Q. What did she tell you? A. She was standing and she noticed two girls were coming out from the dressing room, turning back, going back to the dressing room, and coming back out and went out. She asked them to open up the bag. She opened up and that's all and they went home.

Q. She told you she noticed two girls coming out of the dressing room, but before they left they went back to the dressing room?

A. Went back to the dressing room.

Q. Then they came out again? A. They came out.

Q. How long were they in the dressing room? A. I don't know.

Q. They they passed and -- A. Nothing else?

Q. Nothing? A. Nothing.

Q. Did she tell you who the two girls were? A. Yes. The next morning, yes. She told me the story in the evening.

Q. The next day? A. No, she told me in the evening, but she said she doesn't know who the girls are -- not -- she does not know in the evening, she told me the story in the evening, two girls were in there, but she told me in the evening, the same evening, and

161 the next morning she told me the girls. But in the evening she told me the story, that two other employees were in the dressing room, and they went out and said to her there were two girls, they came in, and they forgot a bag of sweaters.

Q. Say this again? A. They most likely forgot the sweaters, a bag with sweaters in the place.

MR. COFFEY: She most --

Q. Would you answer again?

Go slowly, please. A. Start from the beginning?

The forelady said while she was watching the bags, two girls were coming out from the dressing room, and turned back and went back to the dressing room, and then they came out and they went out.

After that, there were two other employees in the dressing room, came out to the forelady and said there were two girls in here and they left bags with sweaters, a bag with sweaters.

Q. Okay.

Did she tell you who these two girls were? A. Yes.

Q. Who are they? A. That was the Eucaris Ceballos.

162 Q. Is that the lady who is sitting in the rear? A. That's the one, the last one.

Q. Yes.

Is she one of the employees named in this complaint?

A. Yes.

Q. Who else? A. Luz Vallada.

Q. That's the lady on the left? A. Yes.

Q. Okay.

What did you do about this?

What did you do about this? A. I said to her to watch them.

Q. What else happened about this time? A. When she told me that story, it came into another thing into my mind. It was, I believe sometime in March, end of March, sometime, when we asked Abelardo Ceballos --

Q. That's the gentleman who testified yesterday? A. Yes.

(Continuing) -- to clean up the place every Friday afternoon.

Q. Was this in addition to his work as a steamer?

A. Yes. He was not ordered to do it. I asked him if he would like to.

Q. Was this done after hours? A. After hours.

163 Q. Was he paid extra for this? A. Yes.

Q. Paid overtime for this? A. Whatever his card shows overtime, he was paid on overtime.

Q. This wasn't his normal duties, but you asked him if he would clean up the place every Friday? A. Yes.

Q. Did he agree to do this? A. Yes.

Q. When did he start to clean up on Fridays? A. I believe it was sometimes again in March or something.

Q. What time of the day did he start to clean up? A. Friday, after everybody left home.

Q. After everybody left.

Was there anybody else there? A. The nighters.

Q. Do they work in one corner of the plant? A. The nighters work complete in one quarter of the corner of the mill.

Q. Okay.

You asked him to clean up, and did he do this clean up?

A. I asked him, himself, to do it.

Q. He did it? A. Yes.

164 Q. He started in March? A. Right. Yes, he did.

Q. Did he continue to do this every Friday? A. Yes.

Q. All right.

You say as a result of this incident involving his two sisters, something came in your mind. A. He was asked by -- He was asked to do it.

A couple of weeks later, four weeks or five weeks later, I don't remember exactly when, I walked by, after hours, I saw all four of them are cleaning the place.

Q. In other words, he and his three sisters, or two sisters and sister-in-law, were cleaning it on this Friday afternoon?

A. That is correct.

Q. Had you assigned the three girls to do this? A. No.

Q. Did you say anything? A. I didn't say anything. I asked him why, what's --

They're helping me. It goes faster.

I didn't mind anything.

Q. Okay. A. When the forelady told me that story, it hit my mind, it's not only these two, they're four in there. They're all by themselves in the whole place, except the two nighters.

Q. Where are the two nighters, are they way at the other end?

165 A. They're let's put it this way. It's a square place. You divide it in four squares, and the last square over there is the nighters. The last quarter over there.

Q. Where the nighters work, could they see the door? A. No.

Q. It's out of the range of the line of their vision? A. Correct.

Q. Okay.

You say this occurred to you? A. Correct.

Q. Did anything else happen that made you suspicious?

A. Yes.

Q. What was that? A. I was trying to watch them, and on a Friday I said I cannot see, I cannot catch them by hand, or something like that, but let's lay a trap, let's see how it works out.

It was Friday we packed the goods, the goods are packed two different ways. It depends to what customer it goes. Some customers' goes in boxes, to some in bundles. Four garments or six garments, depends of the heaviness of the garment.

That particular garment was packed in bundles, four to a bundle.

When the people left --

Q. You mean the regular workers? A. The packing department.

166 I went over and put away three bundles high, and about five or six --

Q. Where did you put this? A. On the packing table.

Q. Was the packing table near the door? A. Yes, I would say so. Yes.

Q. So you arranged -- A. How the packing table is situated, like you're coming in here from the door, right here is the offices and right behind the offices is the packing department.

Q. So you arranged these bundles on the table? A. Correct.

Q. In what fashion did you arrange them? A. Three high and about six wide. It's about eighteen bundles.

Q. How many sweaters would be in these eighteen bundles? A. It is four in a bundle. That is four times eighteen, that is 72, six dozen.

Q. What's the value of these sweaters, per sweater? A. That happened to be rather an expensive sweater.

Q. How much? A. That garment, I believe, you mean in retail?

Q. How much do you get for it? A. Our cost, I believe -- somewhere about \$40.00, I believe.

167 Q. About \$40.00? A. A dozen, yes.

Q. What will that sell for, retail? A. Retail, I would believe that's sold 8.95, 9.95.

Q. Per garment? A. Yes.

Q. Incidentally, do you sell your workers a sweater, if they wish it? A. Oh, yes.

Q. What's the procedure if a worker wants a sweater for her own use?

How does she go about getting it? A. To the forelady.

Q. She asks the forelady? A. Then cases they come over to me. I say, Ella takes care of it. I don't know nothing.

Q. Does Ella then charge them money for it? A. Yes.

Q. What does she charge them, cost? A. Yes.

Q. You sell sweaters to any worker who wants it at cost?

A. Yes.

Q. But this is handled through Ella? A. Yes.

Q. Does the worker pay for it then, or is it deducted from their pay?

* * * * *

169 A. Yes. I got through with the telephone call, I run down take a look if they're still there, nobody was there.

Q. They'd completed the cleaning up? A. Correct.

Q. Did you look at the packing table? A. I went over to the table, and the whole thing was distorted.

Q. What do you mean by distorted? A. Distorted, it wasn't any more like I laid it out. Like in lined up. It was distorted.

I counted them over, and there were missing already.

Q. How many? A. I believe there were missing about four bundles or something like that. Or six bundles. I don't -- it was missing. Four or six bundles.

Q. What day was this? A. That was on a Friday.

Q. Was this the Friday before May 29th? A. Yes.

Q. This was May 22nd then? A. Correct.

Q. What did you do about this? A. When I saw this, I called over Mr. Haas.

170 I said look here, we are trying to find out something. I don't know what to make out of it. I left them in here, and I came back out, nobody is here, and the whole thing is distorted, and it is missing. I don't know, he asked me what do you make.

I said I don't know. I have to ask the forelady. Maybe the forelady -- Usually the forelady goes always later then everybody else goes. Everybody goes home, she stays another fifteen minutes, half an hour, and she goes away. She wasn't there any more.

Q. Yes. A. So I said I'll come in Tuesday, I'll ask her about it.

Tuesday I asked her about it. She said no, I didn't. I said let's take a look. It has to take me two or three days until the whole thing goes through, we'll see what shows up on the shipping.

Q. In other words, you wanted to wait until the order was shipped? A. I wanted to be completely sure. I am actually missing. By Thursday morning --

Q. In other words, until it's actually shipped and counted out, you can't really know if it really is missing? A. Correct.

Q. It might be missing off the table but it might be somewhere else, is that correct? A. Correct.

171 It could be misplaced, somebody was looking, it was placed here, but not actually missing. It looked to me missing now, but it's not necessarily missing if somebody placed it here or there.

I wanted to wait to know exactly whether I'm actually missing or not.

By Thursday the whole order was completed, packed in, entered in the shipping book, and then I took inventory of it, and I was missing over there about three and a half dozen.

Q. Three and a half dozen? A. Correct.

Q. Is that the same quantity that was missing off the table?

A. No.

Q. More or less? A. On the table was missing more. The bigger part was missing from the table.

Q. But there were sweaters in addition to what was missing off the table, is that what you're saying? A. Correct.

Q. That's Thursday.

What did you then do? A. Then I say uh-uh, I said I think this is the four. I called in Mr. Haas --

172 Q. You did what? A. I called in Mr. Haas, and I said I think this is the --

JUDGE DAVIS: Fault?

THE WITNESS: I think this are the four.

Q. The four? A. The four.

He said are you sure. I said it's enough for me to be suspicious on it. And I don't want any more. I got hurt plenty times on suspicion, but I got along on suspicion only, and I got hurt plenty on it. I don't want to go along any more.

Then I decided to lay them off.

Q. All right.

You decided to dismiss them, is that correct? A. Correct.

Q. When you actually did it, did you tell them anything about -- A. No.

Q. (Continuing) -- about the real reason why you fired them? A. No.

Q. What did you tell the people? A. I tell them that orders are being cancelled, we're getting slow, I have to lay off people, and I laid them off.

Q. Was this a fact, that orders, that you were slow? A. No.

173 Q. Why didn't you give them the real reason? A. To begin with, I was afraid I might be misunderstood by them, and I might get involved in a case. In a libel case. Because I actually did not accuse them. They could have understood I'm accusing them, which I did not.

Q. Did you discuss this matter with your regular attorney before you did this and did he give you any advice as to what you should do with respect to these people? A. No.

Q. Well, did you feel that -- Did you bring any criminal charges against them? A. No.

Q. Why not? A. Previous occasions I didn't press charges, either.

Q. Why didn't you in this case, did you feel you had enough proof to -- A. Proof, suspicion and proof are two different things.

Q. In other words, are you saying you had a suspicion but you didn't feel you had proof? A. Correct.

First of all, let's put it this way. If I would actually catch them in their hand, outside of the building, with sweaters, I would still wouldn't have pressed any charges. In previous occasions I did the same. I didn't press any charges. I didn't get involved in it.

174

Q. You just dismissed the workers? A. Correct.

Q. In this case, did you feel you had legal, sufficient proof to justify the discharge and tell them so? A. I beg your pardon?

Q. I'm trying to get back to the point where you didn't tell them the real reason why you were firing them. A. First of all, as I said, I was afraid I might be misunderstood by them as their English isn't quite good. They misunderstand completely a foreign thing. I might get involved in a libel suit.

Secondary, I just didn't want to embarrass them. Stealing and this and that. I told them a story and that's that.

Q. Now, at the time you dismissed them, did you know that these people had signed a card for the union? A. No.

Q. Did you know anything about the union? A. I know they were trying to organize.

Q. Had you --

JUDGE DAVIS: At that time you know they were trying to organize?

THE WITNESS: Outside the people, yes.

But I didn't know anything about these four.

JUDGE DAVIS: How did you know that?

175

A. I saw cards on my desk.

JUDGE DAVIS: All right.

Q. Cards had been placed on your desk which alerted you to this? A. Yes.

Q. Had you seen these four people sign cards for the union?

A. No.

Q. As a matter of fact, have you seen any of your workers sign cards for the union? A. No.

Q. Do you even know if any of your workers have signed cards? A. No.

Q. Did you ever talk to your workers about the union?

A. No.

Q. Did they ever talk to you about it? A. No.

Q. Did you know that these four people had signed cards for the union? A. No.

Q. Mr. Gelbord, just as the suspicion was -- arose in your mind, about the activities of these people, a suspicion could logically arise in someone's mind here as to why they were dis-

176 missed at about the same time that the union started organizing.

Can you explain that? A. I didn't understand the question.

Q. A suspicion can arise in someone's mind that these four workers were dismissed at about the time the union started to organize.

Can you explain that fact, why it was timed this way?

Am I clear or should I ask it again? A. You are clear, but I don't think I can answer somebody else's mind.

Q. In other words, when you dismissed these people, you dismissed them because of what you considered to be a reasonably good chance that they were stealing? A. Correct.

Q. I take it you weren't absolutely sure in your mind that they were stealing? A. Let's put it this way. I wasn't -- I was, my suspicion, I was sure they were the four, but nevertheless, there was still a doubt in my mind.

Q. You felt you wanted to resolve it by dismissing them?

A. Dismissing them, and let's see, if I'm wrong, I will call them back. That was in my mind.

Q. In other words, if the shortages continued -- A. Continued, then that is the not four, and I would call them back.

177 Q. You would have then determined you were wrong, someone else was doing it? A. Correct.

Q. After you dismissed them, did you continue to check for shortages? A. Yes.

Q. Were there any? A. No.

Q. No shortages? A. No.

Q. The problem was solved? A. Yes.

Q. When the union delegates came up a week later, on behalf of these four dismissed workers, did you tell the four union delegates the real reason for their dismissal? A. No.

Q. Why not? A. To begin with, I didn't feel I have to do any explanations to them, no matter what I'm doing in that place.

Q. And furthermore? A. I didn't want to get into any discussions.

Again, I didn't want to tell them, because immediately I'm back again, if I tell them, I might as well have told the four by themselves.

Q. It was for the same reason you didn't give the real * * *

* * * * *

179 CROSS EXAMINATION

* * * * *

182 what and what.

Q. (By Mr. Coffey) Okay. A. Only what I checked was -- was able to check, what I know.

As I said before, the interlocking orders was almost impossible to check, because I don't know. All I can do is assume.

Q. How much do you know was missing in March? A. In March was missing twelve dozen and four, on style number 1855.

Q. How about in April? A. April I was missing twenty-six dozen and six, on style number 374.

Q. In May? A. In May I was missing three dozen and nine, on style number 882.

This is the one which I was referring to, which I later trapped.

Q. Now, when did you first miss the May goods, style 882?

A. The May goods, in the last week of May.

Q. Did you say that you first missed them on May 22nd?

A. No.

Q. You did not testify to that on your direct examination?

A. I said May 26th, that was Friday, before the Thursday when they were laid off.

* * * *

197 Q. Have you ever seen any of the Ceballos taking anything from the plant, a big bag of anything? A. Personally, no.

Q. Has Ella ever seen them? A. I don't know. I don't think so. I don't know.

I asked her, and she said she doesn't see anything. All she related to me is just that particular case.

* * * *

203 Q. (By Mr. Coffey) Now, did you tell the Board Agent that you decided to take a few people at a time and lay them off and see what happened? A. No.

Q. You did not? A. No.

Q. I ask you to read -- A. I read it.

204 Q. I ask you to --

JUDGE DAVIS: Is that what it says in the Affidavit?

THE WITNESS: That's what it says.

I did not say that.

JUDGE DAVIS: You didn't tell that to the Board Agent?

THE WITNESS: I did not say that.

The lawyer who was present rephrased it and says that is what you intend to do. But that was not my saying.

Q. Did you sign this statement? A. Yes, I signed it.

Q. Are these your initials? A. Yes. On the advice of the lawyer.

But that was not what I actually said.

The lawyer phrased it and put it in like that. This is not what I actually said.

JUDGE DAVIS: All right.

Now, I want that statement read into the record, as what it says in the Affidavit.

You read it, Mr. Coffey.

MR. COFFEY: "I decided to take a few people at a time and lay them off to see what happened. And see what happened."

JUDGE DAVIS: That's the statement?

MR. COFFEY: That's the statement.

205 JUDGE DAVIS: That's the statement, and you say you did not say that?

THE WITNESS: I did not say that.

The lawyer put it in, and on the advice of him, I signed it. But it was not my words.

JUDGE DAVIS: By the lawyer, you mean the Board Agent?

THE WITNESS: No. There was another lawyer present.

JUDGE DAVIS: Whose lawyer?

THE WITNESS: Our lawyer.

JUDGE DAVIS: Your lawyer?

THE WITNESS: Adler was his name.

He said that's what we're going to do later, but when he asked me if I fired them, I did not say anything of the sort. He said, let me rephrase it. We laid them off, and we intended to lay off to see if other people, and he put it in, and he gave me to read it, and I said I didn't say that. The lawyer advised me, sign it, it's okay.

JUDGE DAVIS: So you signed it on your own lawyer's advice?

THE WITNESS: Correct.

Q. (By Mr. Coffey) Now, Mr. Gelbord, turning to another issue, what did Ella say to you concerning these cards which she left on your desk? A. Last night there were union agents downstairs and they handed out cards. There's a couple of girls came up and gave me the cards. Here they are.

Q. Did she say what the union -- what the employees said concerning the union and the cards? A. No.

Q. She had no conversation with you concerning what -- concerning what the employees said about the union, and joining the union? A. She -- They gave me the cards, and they said to her, the union agents were here last night. That's all.

* * * *

212 (By Mr. Coffey) When did you make your decision to lay off the four employees? A. The final decision was Thursday.

Q. When did you make -- When did you take over laying them off, -- Thursday of which? A. Thursday, following that Friday.

Q. Now -- A. That was the 31st of May.

Q. When did you talk to Mr. Haas about laying off these employees? A. We had several conversations during the week about it.

Q. You had several conversations during the week? A. Yes.

Q. But not prior to --

You didn't have conversations with Mr. Haas about laying them off prior to May 25th? A. Prior to May 25th?

Q. Yes. A. No.

Q. No conversations about laying them off prior to May 25th?

A. No.

Q. Okay.

It was in the week, between May 25th and May -- May 31st, that you discussed laying off the employees with Mr. Haas?

A. Correct.

* * * * *

214 JUDGE DAVIS: He's entitled to a document you used.

REDIRECT EXAMINATION

Q. (By Mr. Kimmell) Mr. Gelbord, General Counsel's Exhibit, this document, this Affidavit that he asked you about, would you read the first paragraph to yourself, please? A. Yes.

Q. All right.

The first sentence refers to six dozen? A. Yes.

Q. Is that correct, is that what you told the investigator?

A. I said, I mentioned to him six, but whether it will be there were six bundles involved, sometimes there are bundles which are by dozens, and by half dozens. There might be where I said the six. I did say, it might very well be I confused it with the amount, how much is in a bundle. All in my head was six.

Q. In other words, there were six bundles missing? A. Correct.

Q. Whether that was six dozen or not, would depend whether it was a full dozen per bundle? A. Correct.

Q. In the particular style that was involved that was set out on the table, I think you said before there were half dozen

215 bundles? A. Four pieces in it.

Q. Four pieces in each? A. In a bundle.

Q. That's how you got the twenty-four missing? A. Correct.

Q. Now, by the first time that you became aware of union activity in this plant, was that before or after you dismissed the four people? A. After.

Q. How long after was it that you saw the cards on your desk, and knew that something was going on? A. I beg your pardon, what was the first question?

Q. The people were fired on May 31st? A. Yes.

Q. Now, the cards that you saw on your desk, when did you see that? A. As I said, either Wednesday or Thursday. I don't remember correctly.

Q. Your conversations with the union delegates, did that take place -- when did that take place? Was that -- A. That took place the very first time, Monday.

Q. That's when they came upstairs? A. Correct.

Q. That's Monday, June 4th? A. Correct.

*

*

*

*

*

217

RECROSS EXAMINATION

Q. (By Mr. Coffey) You say that Ella put cards on your desk on Wednesday and Thursday? A. Not and Thursday.

Wednesday or Thursday.

Q. And the next day you -- And on Thursday you discharged -- you laid off the four employees? A. Thursday, yes.

Q. So the same day or the day before you laid off the employees, is when Ella put the cards on your desk? A. I would say yes.

Q. So then you knew that there was an organizing campaign going on the same day you laid off the employees, or the day before you laid off the employees? A. I knew there agents trying to hand out cards to the people, yes. I did.

MR. COFFEY: No further questions.

* * * * *

218 Whereupon,

ANNA IRITZ

called as a witness, was duly sworn and testified as follows:

JUDGE DAVIS: Would you talk up loud so we all can hear you? State your full name and address.

THE WITNESS: My name is Anna Iritz.

DIRECT EXAMINATION

* * * * *

221 A. No.

The other girl, the other employee.

Q. (By Mr. Kimmell) Other girls? A. These two girls came in. The one with the long hair, I'm sorry, the name --

Q. That's Miss Vallada. A. She bring a bag, a brown bag --

Q. Hold it there.

While you were in the waiting room -- A. I was dressing, to go home.

Q. You saw Miss Vallada come in with a brown bag?

A. Yes.

Q. How big a bag? A. Like that.

Q. Was this a bag you get in the supermarket? A. Yes.

Grocery bag.

Q. In other words, when you go to a supermarket and buy things, that kind of a bag? A. That's right.

Q. A large bag? A. Like that.

Q. Okay.

You saw her bring the bag in.

Was the bag closed? A. It was bended.

222 Q. So you couldn't see what was inside? A. No. Only when --

Q. Was anybody with her? A. Yes. The other girl, too.

Q. By the other girl, you mean Eucaria Ceballos?

A. Yes.

Q. They came in together? A. Yes.

Q. Tell us what happened. A. I was dressing myself, dressing up, and the other girl, and they left. And I see, I was there, she left the package, and they closed the window on the box. There was plenty of boxes. I was standing there with the girl, she was with me, standing close, and the girl just left, forgot her package.

Q. Let's take this slowly.

You were in there, they come in with this bag? A. Yes.

Q. They put it on the shelf and then they leave? A. Yes.

Q. Then what did you do? A. And I was interesting what is here, because it's a package, I thought she forgot. I pick up and I saw, I don't go through, but on the top it was a sweater, like a wine color.

Q. Now, did you recognize the sweater?

223 Was this something produced in your plant? A. Yes, I'm sure.

And I take the package, and I left after them.

I mean --

Q. You ran after them? A. Yes. I wanted -- I thought she forgot.

She already gone. This package I gave to the forelady.

MR. COFFEY: That's that?

THE WITNESS: I gave the package to the forelady.

Q. Did you tell Ella Herakovitz who the two girls were?

A. I don't know the name.

I say the girls left, they forgot the package over there, and I give to her. I don't know anything else.

It was a sweater, and red color.

Q. You don't know -- A. How many pieces I don't know. It was a few pieces.

Q. All you could see is what was at the top? A. Yes.

Q. In other words, you didn't count it? A. No.

Q. Did you describe to Miss Herskovitz the two girls who had left that there? A. I no describe it. I just tell her I know there were plenty girls here. I just remember, because she was a long haired, she was came back, and put the package, and after I'm

224 looking for the girl and she'd already left.

Next morning, I know, I mean I know their name. After I ask which was this girl who left the package over there, so that's why I know.

Q. In other words, your intention was to give them the package? A. Yes.

Q. You thought they'd forgotten it? A. Yes.

Q. You gave it to Miss Herskovitz because the girls were gone already? A. Already gone.

Q. Was anybody in there with you? A. Yes.

Q. Who was that? A. The lady, she's just sitting here.

MR. KIMMELL: Would that lady get up and tell her name?

VOICE: My name is Amparo, A-M-P-A-R-O, Gomez,
G-O-M-E-Z.

Q. So, you and Mrs. Gomez were there together? A. Yes.
She was there.

Q. Did she see the same thing? A. Yes.
I opened it.

* * * *

225 Q. In other words, this argument was taking place in Spanish? A. Yes. Plenty Spanish.

I don't understand very well. They speak too fast, I don't speak very well English myself.

226 I was telling the truth, I was working, I was working.

Q. About how many girls were involved? A. I don't know.
A group. It was plenty.

Q. Was it two or three or twelve? A. Much more.

Q. Was it angry? A. Screaming, yelling.

Q. Did it appear to you that the employees were screaming at the union? A. Employees?

Q. That the workers were screaming -- A. Yes. There was something, argument about, go to hell -- I don't want to use the words.

Q. You heard someone say go to hell? A. But screaming, something like that. I was not interested in that much what is up, but after they left, I asked.

Q. Was the argument between the workers and the union men? A. Yes.

It was big, everything together, screaming and, I don't know.

* * * * *

236

AMPARO GOMEZ

* * * * *

DIRECT EXAMINATION

* * * * *

238 Q. (By Mr. Kimmell) *** Were you changing your clothes to go home? A. Everyday we go at the same time to change to the -- to the dressing room to change clothes.

Q. While you were there, tell us what happened. A. When we were in the room, the girls were leaving. Anna showed me what they had left.

Q. What girls are these? A. The girls that were pointed out here.

Q. Miss Vallada and Mrs. Ceballos? A. Anna pointed out to me what they had left.

Q. Had you seen them come in? A. I didn't see them coming in. I only saw them leaving.

Q. You saw them leaving.

When they were leaving, did they have any paper package with them? A. When they left?

No. They didn't have any.

Q. You say Anna pointed out something to you. What was that? A. The bag with something inside. That were sweaters.

Q. What kind of bag was this? A. It was a yellow bag.
 Q. Is this the kind of bag you get from the supermarket?

A. Something like that.

239 Q. A grocery bag? A. Yes.

Q. All right.

Did you look inside the bag? A. Yes.

Q. What did you see? A. I saw --

Q. What did you see? A. A red sweater. Like wine,
 something like that.

Q. Did you recognize that sweater? A. Not the style.
 I don't have the style in my head.

One doesn't pay much attention to them when they are made.

Q. Is this a sweater that's produced in your plant?

A. Yes, sir.

Q. Have you worked on that sweater? A. Yes.

Q. Was there anything else in the bag, outside of the sweater?

A. No. I don't know.

Q. Were there other things, in the bag? Was this --

A. It was full. But I don't know what of.

Q. It was full of something underneath the sweater? A. I
 can't tell you what it was.

Q. Okay.

Now, what did Anna and you do after the two girls left?

*

*

*

*

*

250

MARIA LOPEZ

called as a witness, was duly sworn through the interpreter, FRANKE
 MONTE, and testified as follows:

*

*

*

*

*

251

DIRECT EXAMINATION

* * * *

253 Organize?

Q. (By Mr. Kimmell) You know, pass out cards?

A. Yes.

Q. At that -- After the union passed out cards, did you have lunch each day with Marta? A. Yes.

Q. Every single day? A. Yes.

Q. Okay.

Now, during this lunch time, do you remember a time when Ella came by and said that anybody who joins the union, will get fired?

A. No.

Q. Did you ever hear Ella say that? A. I didn't hear Ella, because I don't understand English very well.

Q. Well, did you ever hear Abelardo translate into Spanish, such a statement? A. No, because I heard the people speak, but not there.

Q. So you never heard Ella tell Marta, her brother, her sister, her sister-in-law, that if the union comes in, they will be fired?

A. No.

Q. You had lunch with her every single day? A. Yes.

* * * *

256

ROSA SALAZAR

called as a witness, was duly sworn through the interpreter, FRANKE MONTE, and testified as follows:

* * * *

257

DIRECT EXAMINATION

* * * *

258 it at the door of the factory.

JUDGE DAVIS: Did you know what it was?

THE WITNESS: No. I didn't read it, I saved it.

MR. KIMMELL: Will the record please show that this is the usual subpoena issued by the National Labor Relations Board?

Q. Did you come here to testify this morning in answer to that subpoena? A. Yes.

Q. Now, do you know Ella Herskovitz? A. Yes. For the time that I've been working there.

Q. Did you ever hear her -- Did she ever talk to you about the union? A. No.

Q. Did you ever hear her talk, say anything about the union? A. No.

Q. Did you ever hear her talk about the union to other employees, in your presence? A. No.

MR. KIMMELL: No further questions.

CROSS EXAMINATION

Q. (By Mr. Coffey) Did you sign a card for the union? A. Yes.

Q. Did you ever give that card back to Mr. Quinones?

* * * *

262 MARINA CASTILLO

called as a witness, was duly sworn through the interpreter, FRANKE MONTE, and testified as follows:

DIRECT EXAMINATION

* * * *

263 Q. (By Mr. Kimmell) Do you work anywhere near the Ceballos family? A. No.

Q. Now, do you know Ella Herskovitz? A. She's the forelady.

Q. At the end of May, did Ella Herskovitz ever talk to you about the union? A. No.

Q. Did you ever hear her say to you, that if you join the union, you'd be fired? A. No.

Q. Did you ever hear Ella say this to any -- to any other employee, in your presence? A. No.

Q. Did you sign a card for the union? A. Yes.

Q. Are you still working there? A. Yes.

MR. KIMMELL: No further questions.

MR. COFFEY: I have no further questions of this witness.

JUDGE DAVIS: Did you tell Ella that you signed a card?

THE WITNESS: No.

JUDGE DAVIS: Who did you tell that -- Did you tell any of your bosses?

* * * * *

265 Whereupon,

ELLA HERSKOVITZ

called as a witness, was duly sworn and testified as follows:

JUDGE DAVIS: Will you state your full name and address?

THE WITNESS: Ella Herskovitz, H-e-r-s-k-o-v-i-t-z. 87-30
Justice Avenue, Elmhurst.

DIRECT EXAMINATION

Q. (By Mr. Kimmell) You work for Lizzdale Knitting?

A. Yes.

Q. How long? A. Eight years.

266 Q. What's your job? A. Forelady.

Q. Are you out on the floor of the plant and in charge of the girls? A. Yes.

Q. Okay.

Now, there's been evidence here that on or about May 30th you said to a group of workers, composed of the Ceballos and two other workers, that if anybody signed up for the union, they'd be fired.

Did you ever make such a statement? A. No. Never.

Q. There's also evidence that when you made this statement, Mr. Ceballos translated it into Spanish for the benefit of his sisters?

A. Never. Never, I never spoke to him about union.

Q. As a matter of fact, does Mr. Ceballos work under you?

A. Yes.

Q. Okay.

Now, directing your attention to March of this year, March of '73, did there come a time when your bosses discussed with you shortages of goods? A. Yes.

Q. What did they tell you? A. They came and told me that he's missing --

267 Q. Who's he? A. Mr. Gelbord.

That he's missing goods.

I said I don't know how or why, I'll try to look into it.

Q. What did you do? A. I looked around. I kept my eyes open.

Q. Did you find anything? A. No.

Q. All right.

Now, did Mr. Gelbord, after this initial time, talk to you again about this? A. Yes.

Q. How many times did he talk to you about it? A. Quite a few times he came to me.

Q. Did the shortages continue? A. Yes.

Q. Now, did there come a time when you took more drastic methods to try to find out what was happening? A. Yes.

Q. What did you do? A. Once I took it on my own, I didn't tell anybody, I thought I'll stay by the door and I'll watch girls, if they're taking out any bags with them.

Q. Is this at the door leaving the plant? A. When they're leaving for home.

268 Q. Is that at the end of the day? A. Yes.

I was standing there and watching, and I noticed two girls going back, but I didn't make nothing --

Q. Let's take that slowly now.

What day was this?

This is around the middle of May? A. Middle of May. I'm not exactly sure.

Q. You were standing at the door? A. Yes.

Q. And you noticed, what did you notice?

First of all, what two girls are you talking about? A. The two girls Eucaris and Luz Vallada.

Q. The girl who had the long blond hair? A. I know them by name.

Q. And Eucaris Ceballos? A. Right.

Q. What time was this? A. About 4:30.

Q. Tell us slowly what you saw.

You were standing at the door looking at the packages?

A. Right. Not packages, sometimes picketbooks, big bags. I thought I'll look into it.

Q. You were standing at the door doing this.

Then what happened?

269 Q. What did these two girls do? A. I noticed these girls walking back to the ladies room.

Q. Before they were walking back, they must have been doing something forward? A. I guess walking, going home.

Q. Were they carrying anything? A. Yes. They were carrying anything.

I couldn't make out. It was quite a distance.

Q. What were they carrying? A. I didn't really notice if they were carrying anything, you know.

I mean it was in the center of the plant, and this is quite a distance.

Q. So you noticed the two girls, walking towards you, and then they turned back and do what? A. They went back. I didn't make nothing out of it.

Q. Did you see where they went back to? A. I didn't notice, because I was checking the girls.

Q. Right.

Then what happened? A. Okay. Everybody left.

Q. Including these two girls? A. Yes. After they came out, they left, also.

270 Q. When these two girls left, did you notice whether they had a brown bag with them? A. No, they didn't have anything.

Q. After everybody left, what happened? A. A few minutes later, these two ladies came out --

Q. What two ladies? A. Anna Iritz and Ampara Gomez. She came out and I think two girls left a brown bag, it was a grocery bag there.

Usually if anything is left in the ladies room, they hand it over to me.

Q. Okay.

Did they give you the bag? A. Yes.

Q. Did you open the bag and look at it? A. I opened the bag.

Q. What did you see? A. I found five sweaters in it.

Q. These sweaters, did you recognize them? A. Yes.

Q. Were they produced in your plant? A. Yes.

Q. Is there any question but that you make them? A. Of course we make them

It wasn't pressed, it was finished, by the finishing table, before it went to the pressing.

271 Q. In other words, it was a finished garment, except for the final stages? A. It wasn't pressed.

Q. How do you recognize it as your sweater? A. I recognize it. I have the style number on it. We have a pin ticket on it, and we --

Q. In other words, knitted sweaters are never quite the same, everybody makes them differently? A. Of course not. That style I know well.

Q. How many sweaters were in there? A. Five.

Q. Now, did Anna and Amparo tell you who had left the package?

A. They told me two girls came in and left it there.

I asked her, do you know them by name. They said no.

Q. Then what did you do? A. I said if tomorrow you'll see them, will you be able to point them out to me. She says yes.

Q. The next morning, did they point the two girls out to you?

A. Yes. Anna. I asked Anna, not Amparo.

Q. Anna pointed out the two girls who left the package?

A. Yes.

Q. Who did she point out? A. Luz Vallada and Eucaris.

Q. Right.

272 Q. Do you sell employees sweaters? A. Yes.

Q. How is that handled? A. If anybody buys anything, they come to me and they pay me.

I'm telling them the price, and it's in a box and it's marked paid.

Q. Does the company have a policy of selling their goods at cost to employees? A. They don't -- They're not involved.

Once in a while --

Q. If an employee buys it, does she get it cheaper than she can buy it outside? A. Yes.

Q. If somebody wants to buy something, they have to come to you? A. Right.

Q. Had either one of these two ladies purchased these five sweaters from you? A. No.

Q. Would you --

If they had purchased it, would you have given it to them in a paper bag? A. No.

Q. How would it have been given to them?

* * * *

274 Q. What's the -- Do you know what that sweater sells for retail? A. It would sell about 5.98. I'm not sure. Between five and 6.98.

Q. And the value, your cost, of course, is less than that?

A. Less.

Q. So you told your bosses about it? A. Right.

Q. Did they discuss this with you? A. Well, later on, I mean I told -- then next day, when they pointed out the girls, and that pointed out, then I discussed it again. Got suspicious.

So again he said, we'll have to keep our eyes open and observe how this happened and what.

275 Q. Were you involved in this incident of the goods on the packing table? A. No.

Q. Did there come a time when you found out that the union was trying to organize this plant? A. Any particular time?

Q. Yes.

How did you find out that there was a union trying to sign up workers? A. The girls came up, some of them, a few girls brought up the card next morning, and I didn't make, I just took the card and I brought it in and put it on the desk.

Q. In other words, the girls gave you the cards? A. Yes.

Q. Were they signed? A. No.

Q. Did the girls say anything to you when they gave you the cards? A. No.

I asked them why are you giving it to me.

They said they don't want it. That's all.

Q. You put it on your bosses desk? A. Right.

Q. Did your boss talk to you about the cards? A. He just asked me who gave it to you.

276 I said some girls brought it up and I just put it on the desk.

Q. Now, there's evidence here that on May 29th you were observed looking out of a window on the second story of this building, and some witnesses say it was on the -- on this chart, window number 5.

Other witnesses say it was window number 6.

Now, were you looking out the window? A. No.

Q. On May 29th? A. No. Not that particular -- no. No, I didn't.

Q. Were you looking out of either window? A. No.

Q. Have you ever looked out those windows? A. Yes, sometimes I look out the windows.

Q. If you look out of window number 5, Mr. Gelbord's office window, could you see the stairs? A. No.

Q. Why not? A. Because it's blocking. It has a roof on top.

You have to take a chair and stick your head out to see the stairs. That's how you have to look.

Q. That's from window number 5? A. Yes.

277 Q. Window 6, have you ever looked out there? A. No.

Q. From window number 6, can you see the stairs? A. No.

Q. Why not? A. Which is window 6?

Q. Six is the one of the general office. A. No, no. No.

Q. Why not? Why can't you see the stairs? A. It's the same thing.

The general office, there's an air conditioner, it's blocked, you have to open the top window, stand on a chair, stick out your head but good to look under there.

* * * * *

279

CROSS EXAMINATION

* * * * *

288

Q. Did you ever see Marta Ceballos take anything from the plant? A. No.

Q. Did you ever see Abelardo Ceballos take anything from the plant? A. No.

Q. Did you ever see Eucaris and Luz Mari take anything from the plant? A. No.

I never checked.

Q. Did you ever see them with a bag in their hand? A. I don't remember if I saw or not. I don't remember.

Q. Okay.

* * * *

291 Q. So the only time you saw the bag was in the possession of Annie? A. When they brought it out, with Ampara together.

Q. That's the only time you saw the bag? A. That's the only time I saw the grocery bag.

Q. All right.

Now, when did you return to the plant on June the 4th, on the Monday that the commotion took place? A. I returned about fifteen minutes later, and I left, because the repair shop wasn't far.

Q. Were the union people still in the plant? A. Yes.

Q. They were still there? A. Yes.

Q. Did you have any conversation with them? A. I came up, I heard there's a big noise. I got scared, what happened there. I came up.

There on one side, about fifteen people from the plant, fighting each other, and I didn't know what happened.

292 Then I realized they're up, and I tried to tell them, why don't you go out, I did tell them, why don't you go out, you have no business to be here.

Q. You told that to the union people? A. Yes.

Q. So you were there during the commotion, weren't you?

A. In the end.

A few minutes later they left.

* * * * *

295 Whereupon,

IMRE HAAS

called as a witness, was duly sworn and testified as follows:

JUDGE DAVIS: Be seated.

* * * * *

296 70-36 Juno Street, J-U-N-O Street, Forest Hills.

DIRECT EXAMINATION

Q. (By Mr. Kimmell) Mr. Haas, I think you have been identified here.

Now, Mr. Haas, it's been testified here that on May 29th you were observed in the window of either of the general office or Mr. Gelbord's office. One witness said one window, one witness said another window, looking out upon the street and the stairs and watching union cards being distributed.

Is this true? A. No.

Q. On that date, did you look out the window and see the stoop? A. No.

Q. Now, from the window in the general office, which is on Exhibit 1, window number 6, is it possible to see the stoop, the stairs, from that window? A. No.

Q. Why not? A. The window is built on a very wide frame. You have to bend over this, and it's a wall blocking your view, and it's also a small roof above the outside stairs.

Q. So you're saying it is impossible -- A. It's impossible to see it from this angle.

297

Q. How about from the window in Mr. Gelbord's office?

A. Same thing.

Q. Is there also air conditioners in these windows?

A. In his office there is an air conditioner in the window.

Q. How far does that air conditioner stick into the room?

A. I would say two feet.

Q. So you'd have to somehow get around the air conditioner in order to look out? A. Exactly.

Q. At my request, did you yesterday evening check again to see whether by looking out these windows you could see the stairs?

JUDGE DAVIS: Well, let me put this on the record.

I think it may be an unnecessary question, because we have arranged for a view, and we're going to get a stipulation to it.

MR. KIMMELL: I withdraw the question.

Q. Now, it's been testified here that on June 4th, following the discharge of these four people, the four people with three union representatives came up to the company's office, is that correct?

A. Yes.

Q. Were you there? A. Yes.

298

Q. Will you tell us what happened? A. I was working between the machines, which is my part of the daily job, the knitting --

Q. Is this out on the plant floor? A. This is at the side of the plant.

Q. This is out on the plant floor? A. Yes.

Q. Okay. A. And I saw them coming in.

I walked over the door, to the door, to the entrance door.

At that time, already Mr. Gelbord was there, too, and this gentleman from the union, they gave him a card, and an argument started, and suddenly it was a big argument.

Q. Who was arguing when the big argument started?

A. I would say Mr. Gelbord with one of the agents, quite loud, discussion, and people from the plant gathered around and they were screaming and other union agents were screaming back.

Q. How many people from the plant gathered around?

A. I would say around twelve to fifteen.

Q. What did these employees say to them? A. They shouted against them. They don't want them there, they should leave them along. They are happy in the place.

Q. What did the union delegate say? A. They were screaming back and forth.

299 Q. What were they saying? A. We don't want you, we want some people who are not as happy as you, not everybody is as satisfied as you.

Q. Now, did there come a point when this commotion got out of hand, and Mr. Gelbord took some action? A. Well, he was quite loud, and asked them to leave. They didn't leave. So he said I have to call the police.

Q. Did that make them leave? A. No.

Q. Did Mr. Gelbord call the police? A. As far as I know, yes.

Q. Did the police come and take these people away, or did they leave beforehand? A. No, they left before.

Q. After he called, they left? A. Yes.

Q. Now, when Mr. Gelbord called for the police, was this after the commotion with the employees started? A. Middle of the commotion.

Q. Now, at the end of this commotion, did you talk to Abelardo, personally? A. Not at the end of the commotion.

Q. Did you talk to him at any point? A. I spoke to Abelardo, I spoke to Mr. Aldrich.

Q. Let's talk about your conversation with Mr. Abelardo.
300 What did you say to him?

This is on June 4th. A. June 4th?

Q. What did he say and what did you say? A. I tried to calm down everybody.

JUDGE DAVIS: What did you say to him?

THE WITNESS: I said to him what is this big excitement, I'm sure this can be taken care of in a quiet way, or between us, or in the right channels. There's no sense to get anybody hot, in a case like this.

Q. Is this what you said to Abelardo? A. That's what I said to him.

Q. What did he say to you? A. Nothing in particular.

Q. Did you say anything to Abelardo about the union?

A. No, I did not.

Q. Did you mention the word union to Abelardo? A. No.

Q. Did he mention the word union to you? A. No.

Q. All right.

Now, did there come a time when your partner talked to you about shortages of goods in the plant? A. Yes.

Q. When was this?

* * * * *

309 Q. (By Mr. Coffey) So, it was on the Wednesday and Thursday of May 30th or 31st, that you first discovered there was an organizing campaign? A. No

 I don't know if I can call it organizing campaign. I find the cards so I knew they were there, right.

Q. Did you see any union organizers prior to Monday, June the 4th?

 Did you see any of them giving out cards? A. No. This was the first day when I saw this.

Q. When you spoke to Abelardo, you say you were trying to calm things down? A. Right.

Q. And you took him aside? A. Well, it was in the office. Our office is not that big.

Q. You said you took him away from everyone else and talked to him privately, is that true? A. What you call privately, I don't know.

 It's a small office, a lot of people, front of it. Mr. Gelbord inside with some of the gentlemen, and next to him, I am and Abelardo.

Q. Okay. A. So it's --

310 Q. You took him off to the side? A. On the side of the office, yes.

Q. Did you address your comments to him alone? A. Yes.

Q. Was he making a commotion? A. Everybody was screaming, yelling.

Q. Was he screaming and yelling? A. Yes.

Q. What was he screaming and yelling? A. I don't know.

Q. You don't recall what he was screaming and yelling?

A. No.

Q. What did you tell Abelardo at that time, when you took him aside? A. I just stated.

Q. I'd like to hear it again. A. I tried to calm him down. I said there's no reason for the big commotion, because everybody gets excited, won't solve nothing. All we can solve it in a peaceful way, or that in courts this can be solved. Whatever it is I don't know the legal ways, but there's no sense to get a heart attack for anybody, because it's not worth it.

311 Q. Did you say it, what it was? A. Beg your pardon?

Q. What was going to be solved? A. I don't understand.

Q. Did you say to him what it was that was going to be solved? A. Whatever problems he had with us. I don't know.

Q. You said — Did you mention the problems? A. They came in, that we should take them back, because of illegal we laid them off; that was stated.

* * * *

324 MR. COFFEY: Eucaris Ceballos.

Whereupon,

EUCARIS CEBALLOS

called as a witness, was duly sworn through the interpreter, FRANKE MONTE, and testified as follows:

325 JUDGE DAVIS: State your name.

THE WITNESS: Eucaris Ceballos. 111-49 44th Avenue, Corona, Queens.

DIRECT EXAMINATION

Q. (By Mr. Coffey) Did you ever take anything from Lizzale, that didn't belong to you? A. Never.

Q. Did Luz Mari ever take anything from Lizzale that didn't belong to her?

A. Never.

None of my friends did.

* * * *

331 **REDIRECT EXAMINATION**

Q. (By Mr. Coffey) Is Luz Mari Vallada, Abelardo Ceballos' girlfriend? A. Yes.

* * * *